



## Wylie City Council

# NOTICE OF MEETING

### Regular Meeting Agenda

May 10, 2011 – 6:00 p.m.

Wylie Municipal Complex – Council Chambers

300 Country Club Road, Building #100

Eric Hogue .....	Mayor
M. G. "Red" Byboth .....	Mayor Pro Tem
David Goss .....	Place 1
Kathy Spillyards .....	Place 3
Bennie Jones .....	Place 4
Rick White .....	Place 5
Carter Porter .....	Place 6
Mindy Manson .....	City Manager
Richard Abernathy .....	City Attorney
Carole Ehrlich .....	City Secretary

*In accordance with Section 551.042 of the Texas Government Code, this agenda has been posted at the Wylie Municipal Complex, distributed to the appropriate news media, and posted on the City website: [www.wylietexas.gov](http://www.wylietexas.gov) within the required time frame. As a courtesy, the entire Agenda Packet has also been posted on the City of Wylie website: [www.wylietexas.gov](http://www.wylietexas.gov).*

*The Mayor and City Council request that all cell phones and pagers be turned off or set to vibrate. Members of the audience are requested to step outside the Council Chambers to respond to a page or to conduct a phone conversation.*

*The Wylie Municipal Complex is wheelchair accessible. Sign interpretation or other special assistance for disabled attendees must be requested 48 hours in advance by contacting the City Secretary's Office at 972-516-6020.*

### CALL TO ORDER

*Announce the presence of a Quorum.*

### INVOCATION & PLEDGE OF ALLEGIANCE

### PRESENTATIONS

- Unveiling and Dedication of the City of Wylie Seal
- Nik Molina from Birmingham Elementary won the raffle for Mayor for a Day.
- Proclamation EMS Week: May 15<sup>th</sup> – 21<sup>st</sup>

### CITIZENS COMMENTS ON NON-AGENDA ITEMS

*Residents may address Council regarding an item that is not listed on the Agenda. Residents must provide their name and address. Council requests that comments be limited to three (3) minutes. In addition, Council is not allowed to converse, deliberate or take action on any matter presented during citizen participation.*

**CONSENT AGENDA**

*All matters listed under the Consent Agenda are considered to be routine by the City Council and will be enacted by one motion. There will not be separate discussion of these items. If discussion is desired, that item will be removed from the Consent Agenda and will be considered separately.*

- A. **Consider, and act upon, approval of the Minutes of the April 26, 2011 Regular Meeting of the Wylie City Council and the Minutes of the May 3, 2011 Special Called Work Session of the Wylie City Council.** *(C. Ehrlich, City Secretary)*
- B. **Consider, and act upon, authorizing the City Manager to terminate an Ad Valorem Tax Abatement and Sales Tax Reimbursement Agreement between the City of Wylie, the Wylie Economic Development Corporation, Greenway-Springs, Ltd., Greenway-Columbia, L.P., and Greenway-Wylie, L.P.** *(S. Satterwhite, WEDC Executive Director)*
- C. **Consider and act upon authorizing the City Manager to enter into a Compromise Settlement Agreement and Release between the City of Wylie and ARCHITEXAS, effective May 2, 2011; ratifying all actions taken by the City Manager to effectuate the settlement.** *(M. Manson, City Manager)*

**REGULAR AGENDA****Public Hearings**

1. **Hold a Public Hearing and consider and act upon a Replat for Keller's First Addition, Lots 1R-1 & 2, Block 3, to combine 2 lots into a single lot for the development of a medical office and to create Lot 2 for future development.** *(R. Ollie, Planning Director)*

**Executive Summary**

The property totals 1.115 acres and would create one Commercial lot (Lot 1R-1, Block; 3) consisting of 0.494 acres and one commercial lot (Lot 2, Block 3) being 0.621 acres in size. Lot 1R-1 is situated in both the Commercial Corridor District and within the Downtown Historic District. The property was originally platted in the early sixties as Keller's First Addition and has undergone several replats since that time.

2. **Hold a Public Hearing and consider, and act upon amending Zoning Ordinance 2005-58, Article 4, Section 4.3 Nonresidential Design Standards (F. Architectural Features); regarding exterior building materials. ZC2011-04** *(R. Ollie, Planning Director)*

**Executive Summary**

The current Zoning Ordinance requires brick as the primary exterior building material for nonresidential construction. The ordinance also requires at least 20 percent stone on the front façade. The ordinance calls for visual variety and/or architectural detailing and to utilize two complementary primary façade materials. Again, the only allowed primary material is brick. The proposed amendment would clearly define primary exterior materials for non-residential development as well as secondary materials. This amendment would allow for flexibility, while also achieving the required visual variety and ensuring durability of materials.

**General Business**

3. **Consider, and act upon, the appointment of a 2011 Board and Commissions City Council Interview Panel to conduct the May/June 2011 board applicant interviews.** *(C. Ehrlich, City Secretary)*

**Executive Summary**

Each year the City Secretary's Office solicits and compiles applications from Wylie residents wishing to serve on various Wylie Boards and Commissions. These applications are received through the year until May 25<sup>th</sup> of each calendar year. Additionally, in May/June of each year, the applications are compiled into appointment timeframes to allow the three council member panel time to interview each applicant and subsequently choose a list of applicants to recommend to the full Council to serve two year terms on the various boards. The terms are staggered so each year approximately half of the members serving on each board and commission are appointed.

4. **Consider and act upon, the appointment of a board member to the North Texas Municipal Water District Board to fill an expired term of June 1, 2011 to May 31, 2013.** *(C. Ehrlich, City Secretary)*

**Executive Summary**

The Board of Directors of North Texas Municipal Water District is a policy making body similar in nature to the City Council. The Board is responsible to both the State of Texas and to the member cities for assuring that NTMWD operations occur in accordance with state and federal law, in alignment with NTMWD policy, and in the best interests of the cities receiving services. In accordance with the statute creating the District (Article 8280-141), the qualifications of a director include the following: "No person shall be appointed a Director unless he resides in the city from which he is appointed. No member of a governing body of a city and no employee of a city shall be appointed as a Director." Under other state law, no other government official that receives compensation could be appointed. NTMWD is requesting that by majority vote, the Wylie City Council reappoint Mr. Robert Thurmond, Jr. or appoint another Director to serve a term from June 1, 2011 to May 31, 2013.

5. **Consider, and act upon, authorizing the City Manager to enter into a contract with Pavement Restoration Inc. in the amount of \$55,792.00 for asphalt surface maintenance on City streets.** *(M. Sferra, Public Services Director)*

**Executive Summary**

As asphalt ages from exposure to the sun and elements, the asphalt oxidizes and becomes brittle and prone to cracking. Pavement Restoration, Inc. provides a service whereby they apply petroleum oils and resins to asphalt streets. This product penetrates into the existing asphalt to replenish the loss of original oils and resins. The result is that the asphalt is restored, becomes flexible instead of brittle, and the life of the streets are extended for another five to seven years. At that point, the process can be repeated again to further extend the life of the street even more. This product has been used by other cities and counties in Texas with good results. Staff has checked references at the City of Lubbock, City of Brownsville, and Travis County and found that these entities are very satisfied with the product and the contractor. They have multi-year contracts for the service and agree that it is a cost-effective measure over the traditional milling and overlay process.

6. **Consider, and act upon, authorizing the City Manager to execute an agreement with U.S. ROW for right-of-way acquisition services for the Stone Road Phase II paving project.** *(C. Holsted, Engineering Director)*

**Executive Summary**

The Stone Road Phase II project includes approximately 2,800 linear feet of a 4-lane paving section from Akin Lane to W.A. Allen Blvd and approximately 1,900 linear feet of paving of FM 544 south of Stone Road to Collins Blvd. 1,300 linear feet of off-site drainage is also included in the project. The construction plans are 90% complete and the projected construction cost for the project is \$4.7 million.

7. **Consider, and act upon, Resolution No. 2011-11(R) designating the former Library building, located at 800 Thomas Street, to be set aside and reserved for use as a new Senior Citizen Center.** *(M. Manson, City Manager)*

**Executive Summary**

At the request of Mayor Hogue, this item has been placed on the agenda for Council consideration. A consensus was reached during FY 2010-11 Budget Work Sessions that the former Library building be reserved for future use as a new Senior Citizen Center; however, no formal action has been taken to ratify that decision. The Resolution is intended to formally designate and reserve the former Library for the use of a Senior Citizen Center and to memorialize that decision.

**WORK SESSION**

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- **Remodel and Design of Public Safety Building, (Old Municipal Complex)**  
*(J. Butters, Assistant City Manager)*

**ADJOURNMENT**

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**CERTIFICATION**

*I certify that this Notice of Meeting was posted on this 6th day of May 2011 at 5:00 p.m. as required by law in accordance with Section 551.042 of the Texas Government Code and that the appropriate news media was contacted. As a courtesy, this agenda is also posted on the City of Wylie website: [www.wylietexas.gov](http://www.wylietexas.gov).*

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Carole Ehrlich, City Secretary

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Date Notice Removed



# Wylie City Council

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## Minutes

### Wylie City Council Meeting

Tuesday, April 26, 2011 – 6:00 p.m.

Wylie Municipal Complex – Council Chambers

300 Country Club Road, Bldg. 100

Wylie, TX 75098

### CALL TO ORDER

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*Announce the presence of a Quorum.*

Mayor Eric Hogue called the meeting to order at 6:00 p.m. with the following Wylie City Council members present: Mayor pro tem Red Byboth; Councilwoman Kathy Spillyards, Councilman Carter Porter, Councilman Rick White, and Councilman David Goss. Councilman Bennie Jones was absent.

Staff present were: City Manager, Mindy Manson; Assistant City Manager, Jeff Butters; Fire Chief, Randy Corbin; Police Chief, John Duscio; Finance Director, Linda Bantz; City Engineer, Chris Holsted; Public Services Director, Mike Sferra; Planning Director, Renae' Ollie; Building Department Director, Mike McAnnally; WEDC Executive Director, Sam Satterwhite; City Secretary, Carole Ehrlich; Public Information Officer, Craig Kelly, and various support staff.

### INVOCATION & PLEDGE OF ALLEGIANCE

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Fire Chief Corbin gave the invocation and Police Chief Duscio led the Pledge of Allegiance.

### PRESENTATIONS

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- Presentation of 5<sup>th</sup> 6 Weeks Star Students – Fairness

Mayor Hogue and Mayor Pro Tem Byboth presented medallions to students demonstrating the character trait of "Fairness." Each six weeks one student from each WISD campus is chosen as the "star student."

### CITIZENS COMMENTS ON NON-AGENDA ITEMS

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**Bobby Heath** (205 Harborview, Wylie) representing the Wylie Downtown Merchants Association addressed council thanking staff members for working with the group regarding the regulations for signs and banners in the downtown area. He explained the amount of assistance received from staff is not the norm in many cities.

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### **CONSENT AGENDA**

*All matters listed under the Consent Agenda are considered to be routine by the City Council and will be enacted by one motion. There will not be separate discussion of these items. If discussion is desired, that item will be removed from the Consent Agenda and will be considered separately.*

- A. Consider, and act upon, approval of the Minutes of the April 12, 2011 Regular Meeting of the Wylie City Council. (C. Ehrlich, City Secretary)**
- B. Consider and place on file the City of Wylie Monthly Investment Report for March 31, 2011. (L. Bantz, Finance Director)**
- C. Consider and place on file, the Monthly Revenue and Expense Report for the City of Wylie as of March 31, 2011. (L. Bantz, Finance Director)**
- D. Consider and place on file, the Monthly Revenue and Expense Report for the Wylie Economic Development Corporation as of March 31, 2011. (S. Satterwhite, Executive Director)**
- E. Consider, and act upon, Ordinance No. 2011-11 amending Subsection A (Building, Plumbing, Mechanical and Electrical Permit Fees) of Section III (Construction Permit and Fees) of Appendix C of the Wylie Code of Ordinances (Wylie Comprehensive Fee Schedule); Providing for a Penalty for the Violation of this Ordinance; Providing for Repealing, Savings and Severability Clauses; Providing for the Publication of the Caption of this Ordinance and Providing for an Effective Date. (M. McAnnally, Building Inspections Director)**

### **Council Action**

A motion was made by Councilman White, seconded by Councilman Porter to approve the consent agenda as presented. A vote was taken and the motion passed 6-0 with Councilman Jones absent.

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### **REGULAR AGENDA**

#### **Presentation**

**Presentation by North Texas Municipal Water District concerning the district's request of Member Cities and Customers to initiate Stage 1 of the Drought Contingency Plan. (Mike Rickman, NTMW)**

North Texas Municipal Water District Deputy Director Mike Rickman presented the basis for recommending Stage 1 of the City's Drought Contingency Plan.

Rickman explained that on March 25, 2011, the North Texas Municipal Water District (NTMWD) took action to initiate Stage 1 of the NTMWD Water Conservation and Drought Contingency and Water Emergency Response Plan, to be effective April 19, 2011. He reported Stage 1 of the Plan is being implemented as a result of invasive zebra mussels being found in Lake Texoma and the temporary loss of the Lake Texoma raw water supply by NTMWD. The infestation of zebra mussels in Lake Texoma has resulted in a loss of 22.5% of the NTMWD's total raw water supply. Zebra mussels are not harmful to humans and do not contaminate the water supply; however, they do attach to water facilities and pipes that pump water causing increased operating and maintenance costs.

Rickman noted that NTMWD is working with state and federal agencies to minimize zebra mussels from being transferred from Lake Texoma into the Trinity River basin and ultimately southward to the Gulf of Mexico. He explained that he was visiting with each member city to recommend that the Stage 1 Plan be implemented by each member city.

1. **Consider, and act upon, the implementation of Section 114-96 (a), (2), b, and e of Stage 1 of the City's Drought Contingency Plan.** (*M. Sferra, Public Services Director*)

#### **Staff Comments**

Public Services Director Sferra addressed council stating that in a letter received by the City, the NTMWD requests that Member Cities and Customers implement the following water conservation strategies:

- Initiate Stage 1 of their respective drought contingency and emergency response plans.
- Increase public education efforts on ways to reduce water use.
- Intensify efforts on leak detection and repair.

Under Section 114-96, (a), (2) of the City's Drought Contingency Plan, the following Stage 1 responses are available for implementation:

- a. Request voluntary reductions in water use by the public and by wholesale customers.
- b. Increase public education efforts on ways to reduce water use.
- c. Review the problems that caused the initiation of Stage 1.
- d. Notify major water users and work with them to achieve voluntary water use reductions.
- e. Intensify efforts on leak detection and repair.
- f. Reduce non-essential city government water use. (Examples include street cleaning, vehicle washing operation of ornamental fountains, etc.)
- g. Reduce city government water use for landscape irrigation.
- h. Ask the public to follow voluntary landscape watering schedules.
- i. Notify wholesale customers of actions being taken and request implementation of similar procedures.

Sferra explained items b and e of the above Section correspond with the request received from NTMWD, and staff requests that Council authorize implementation of those two items.

Sferra explained that in addition to the measures recommended, the City's Water Conservation Plan is in effect at all times for users of the City's water supply. Requirements of the Water Conservation Plan include the following landscape water management measures which will assist NTMWD with their request to conserve water:

- Time of day restrictions prohibiting lawn irrigation watering from 10:00 a.m. to 6:00 p.m. beginning April 1 and ending October 31 of each year.
- Prohibition of watering of impervious surfaces. (Wind driven water drift will be taken into consideration.)
- Prohibition of outdoor watering during precipitation or freeze events.
- Lawn and landscape irrigation limited to twice per week as per the chart below:

Trash Days	Watering Days
Monday	Monday and Thursday
Tuesday	Tuesday and Friday
Wednesday	Wednesday and Saturday
Thursday	Thursday and Sunday
Friday	Friday and Monday

#### **Council Action**

A motion was made by Councilman Porter, seconded by Mayor pro tem Byboth to implement Section 114-96 (a), (2), b and e of Stage 1 of the City's Drought Contingency Plan. A vote was taken and the motion passed 6-0 with Councilman Jones absent.

- 2. Consider, and act upon, authorizing the City Manager to enter into a contract with Land Design Partners-DFW, Inc. in the amount of \$59,290 for professional services related to the City of Wylie Trails Master Plan. (M. Sferra, Public Services Director)**

#### **Staff Comments**

Public Services Director Sferra addressed council stating that on February 22, 2011; City Council authorized the City Manager to negotiate a professional services contract with Land Design Partners-DFW, Inc. for the City of Wylie Trails Master Plan. This approval followed a formal RFP process and presentation to City Council by the two highest-ranking firms identified in the RFP process. Funds for developing a Trails Master Plan were included in the annual budget for fiscal year 2011. The 2010 City of Wylie Parks, Recreation and Open Space Master Plan identifies the number one outdoor facility priority as being hike and bike trails. The intent of this new Trails Master Plan will be to study the feasibility of a trails network within the entire City.

Mr. Sferra explained the Trails Master Plan will be a tool that City officials can use to plan and coordinate future improvements for trails and associated infrastructure by various City departments. Land Design Partners-DFW, Inc. submitted a proposal and conferred with staff to discuss the project scope and fees. Sferra noted the City Attorney's office had reviewed the contract document to make sure it satisfies all City requirements.



### **Council Action**

A motion was made by Councilman White, seconded by Councilman Porter to authorize the City Manager to enter into a contract with Land Design Partners-DFW, Inc. in the amount of \$59,290 for professional services related to the City of Wylie Trails Master Plan. A vote was taken and the motion passed 6-0 with Councilman Jones absent.

3. **Consider, and act upon, Resolution No. 2011-09(R) authorizing the City Manager to execute an Agreement with the Texas Department of Transportation for the furnishing, installing, and maintenance of traffic signal preemption equipment.** *(C. Holsted, Planning Director)*

### **Staff Comments**

City Engineer Holsted addressed council stating that on December 14, 2010 Council approved an agreement with Lee Engineering for the design of traffic signal Opticom Detection upgrades. Opticom equipment allows emergency vehicles to preempt the normal operation of traffic lights which stops conflicting traffic and gives the emergency vehicle the right of way. The City of Wylie currently has seven traffic signals which do not have Opticom equipment installed. The intersections are FM 544 and Westgate, FM 544 and SH 78, SH 78 and Alanis, SH 78 and Westgate, SH 78 and Ballard, SH 78 and Brown, and SH 78 and Spring Creek. These signals are owned by TxDOT and we have submitted the final engineering plans for the installations.

### **Council Action**

A motion was made by Councilman White, seconded by Councilwoman Spillyards to adopt Resolution No. 2011-09(R) authorizing the City Manager to execute an Agreement with the Texas Department of Transportation for the furnishing, installing, and maintenance of traffic signal preemption equipment. A vote was taken and the motion passed 6-0 with Councilman Jones absent.

4. **Consider, and act upon, Resolution No. 2011-10(R) designating the Finance Director, the City Manager and the Assistant Finance Director as authorized representatives to invest City funds in the TexPool Local Government Investment Pool and authorizing the Accountant selected information authority.** *(L. Bantz, Finance Director)*

### **Staff Comments**

Finance Director Bantz addressed council stating that the City currently utilizes TexPool as an investment option. TexPool is a local government investment pool under the oversight of the Comptroller of Public Accounts. Administrative and investment services are provided to TexPool by Federated Investors, Inc. The City has been a TexPool participant for many years and has received excellent service.

### **Council Action**

A motion was made by Councilwoman Spillyards, seconded by Councilman Porter to adopt Resolution No. 2011-10(R) designating the Finance Director, the City Manager and the Assistant Finance Director as authorized representatives to invest city funds in the TexPool

Local Government Investment Pool and authorizing the Accountant selected information authority. A vote was taken and the motion passed 6-0 with Councilman Jones absent.

5. **Consider, and act upon, Ordinance No. 2011-12 amending Ordinance No. 2010-17 (2010-2011 Budget) for proposed mid-year amendments for fiscal year 2010-2011.**  
*(L. Bantz, Finance Director)*

#### **Staff Comments**

Finance Director Bantz addressed council stating that the mid-year budget amendments are generally intended to cover unanticipated and/or unavoidable revenue and expenditure adjustments to the adopted budget. Bantz explained that the detail is presented in the packet and made part of the ordinance for the requested items which are located within the General Fund, Utility Fund, Emergency Communications, 4B Fund, Wylie Economic Development Corporation, and the Fire Training Center Fund. She noted that the requests are further defined as neutral (matching revenues to expenditures), revenue increases, or expenditure increases.

Bantz reviewed the individual line items with council.

#### **Council Action**

A motion was made by Councilman White, seconded by Councilwoman Spillyards to adopt Ordinance No. 2011-12 amending Ordinance No. 2010-07 (2010-2011 Budget) for proposed mid-year amendments for fiscal year 2010-2011. A vote was taken and the motion passed 5-1 with Mayor Hogue, Mayor pro tem Byboth, Councilwoman Spillyards, Councilman White and Councilman Porter voting for and Councilman Goss voting against. Councilman Jones was absent.

6. **Consider, and act upon, Resolution No. 2011-13(R) approving an Impact Fee Agreement between the City of Wylie and the Wylie Economic Development Corporation.**  
*(S. Satterwhite, WEDC Executive Director)*

#### **Executive Summary**

WEDC Executive Director Satterwhite addressed council stating that the Wylie Economic Development Corporation Board of Directors formally requests that the Wylie City Council consider reducing thoroughfare impact fees associated with the construction of a 96,000 square foot industrial facility located at 1405 Martinez Lane. As part of the Ascend Custom Extrusion project which is a public private partnership between Ascend and the WEDC, a \$15 million investment is being made in Wylie along with the initial creation of seventy-five jobs up to two hundred within three to five years. Satterwhite explained as a component of the project, the WEDC is developing the real property improvements and will lease the same back to Ascend.

The proposed Impact Fee Agreement between the WEDC and City of Wylie provides for the reduction of thoroughfare impact fees from \$202,789.44 to \$41,095.86, or a credit of \$161,693.58. Under Section 395.023 of the Local Government Code, municipalities are able to waive, or credit, fees due from a developer for offsite improvements funded by the developer. In this case, the WEDC replaced 1,865 linear feet of asphalt roadway (Martinez Lane) with a concrete street, curb, and gutters at a construction cost of \$412,524. Section 395.023 allows for the WEDC to request a credit equal to the construction cost of offsite improvements, but the WEDC is not requesting a full credit.

Mr. Satterwhite explained during the financing phase of this project he requested from building inspections the total impact fees that would be assessed on the proposed expansion. The figure received was \$108,000 for all fees associated with the project. That amount was made part of the overall financing package. While applying for the permit to begin work, staff was told that the correct impact fee amount was \$271,000 leaving a deficit in the total finance package of \$162,000 to complete the project. The fee error related to impact fees was \$203,000 of the \$271,000 total fees.

Mr. Satterwhite asked for a reduction in the impact fees to allow the original construction costs to remain the same and in light of thoroughfare improvements made and paid for by WEDC. The requested thoroughfare impact fee of \$41,095.86 in addition to all other development fees imposed by the City of Wylie for the Ascend project equals \$108,825. The WEDC is requesting neither a reduction nor waiver of any other fees aside from the thoroughfare impact fee.

Satterwhite reported on July 20, 2011, the WEDC Board of Directors met and approved the attached Agreement.

### **Council Discussion**

Mayor Hogue asked Mr. Satterwhite what caused the error in impact fee calculations. Mr. Satterwhite explained the miscalculation was on the part of the Building Department. He explained this was a good faith calculation with an error in the calculations.

Councilman Goss asked Mr. Satterwhite if in the past year he had come before council with a comprehensive presentation regarding impact fees. Mr. Satterwhite replied that he had; that presentation was based upon developers believing the current impact fees were too high.

### **Council Action**

A motion was made by Councilman Porter, seconded by Mayor pro tem Byboth to adopt Resolution No. 2011-13(R) approving an Impact Fee Agreement between the City of Wylie and the Wylie Economic Development Corporation. A vote was taken and the motion passed 5-1 with Mayor Hogue, Mayor pro tem Byboth, Councilwoman Spillyards, Councilman White and Councilman Porter voting for and Councilman Goss voting against. Councilman Jones was absent.

## **7. Consider and act upon Resolution No. 2011-14(R) rejecting the bids for Community Park Improvements. (Public Services Director, M. Sferra)**

### **Staff Comments**

Public Services Director Sferra addressed council stating that bids for Community Park Improvements were received on Wednesday, April 20, 2011. The lowest base bid exceeds the amount of budgeted funding for the project. After discussion with the consultant, staff is recommending that the bids be rejected.

Public Services Director Sferra reported staff would re-bid the project and provide additional time to allow more bidders to submit bids.

### **Council Action**

A motion was made by Councilman Goss, seconded by Councilman White to adopt Resolution No. 2011-14(R) rejecting the bids for Community Park Improvements. A vote was taken and the motion passed 6-0 with Councilman Jones absent.

### **READING OF ORDINANCES**

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*Title and caption approved by Council as required by Wylie City Charter, Article III, Section 13-D.*

City Secretary Ehrlich read the captions to Ordinance No.'s 2011-11 and 2011-12 into the official record.

### **WORK SESSION**

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- **Annual Building Inspections Department Overview** (*M. McAnnally, Building Inspections Director*)

Building Inspections Director McAnnally gave an overview of the Building Department. Some of the areas of interest included: Code Enforcement, processes for building inspections (building, electrical, mechanical, and plumbing), and the abatement of dangerous structures and the role the Construction Code Board takes in those processes.

Building Inspections Director McAnnally explained there had been an increase in calls received for code enforcement and the department was going into the busiest time of year for weed abatement and other complaints.

- **Planning the Grand Opening of the Wylie Municipal Complex.** (*City Council*)

Mayor Hogue opened the work session for discussions regarding the Grand Opening of the Wylie Municipal Complex. He asked each council member how many sponsorships they had received from letters that went out two weeks prior to the work session. Council members noted that it had been difficult to reach some of the businesses and asked for additional time to do so.

The mayor reminded council that in order to secure the entertainment and contract for other amenities, the council would need to have the final numbers by May 2, 2011. Consensus of the Wylie City Council was to call a meeting for Tuesday, May 2, 2011 to finalize plans for the event and report sponsorships received.

## **ADJOURNMENT**

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With no further business before the Wylie City Council, a motion was made by Councilman Porter, seconded by Councilman White to adjourn the meeting at 8:45 p.m. A vote was taken and the motion passed 6-0 with Councilman Jones absent.

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**Eric Hogue, Mayor**

**ATTEST:**

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**Carole Ehrlich, City Secretary**



## Wylie City Council

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### **Minutes Special Called Work Session**

#### **Wylie City Council Meeting**

May 3, 2011 – 6:00 p.m.

Wylie Municipal Complex – Council Conference Room  
300 Country Club Road, Bldg. 100  
Wylie, TX 75098

#### **CALL TO ORDER**

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*Announce the presence of a Quorum.*

Mayor Eric Hogue called the meeting to order at 6:10 p.m. with the following Wylie City Council members present: Councilwoman Kathy Spillyards, Councilman Carter Porter, Councilman Rick White, and Councilman David Goss. Mayor pro tem Red Byboth and Councilman Bennie Jones were absent.

Staff present included: City Manager, Mindy Manson; Assistant City Manager, Jeff Butters; Library Director, Rachel Orozco; Public Information Officer, Craig Kelly; Construction Manager, Shane Colley, and City Secretary, Carole Ehrlich.

#### **INVOCATION & PLEDGE OF ALLEGIANCE**

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Councilman Goss gave the invocation and Councilman Porter led the Pledge of Allegiance.

#### **WORK SESSION**

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- **Planning the Grand Opening of the Wylie Municipal Complex** (*City Council*)

Mayor Hogue reported that of the contacts made for sponsorships he had several maybe responses and one firm commitment for \$1,000 from Byrne Construction. Mayor Hogue asked each council member what their totals were for committed sponsorships. Councilman Porter reported he had none at this time. Councilman Goss reported he had none to report and had a difficult time making contact with perspective sponsors. Councilwoman Spillyards reported she had a committed sponsorship from American National Bank for \$1,000 and one additional she felt would be around \$500. She reported that several contacts had not returned calls at this time. Councilman White reported no commitments at this time.

City Manager Manson reported estimates for staff overtime, fireworks, entertainment, staging/sound, advertising, signage and miscellaneous costs were estimated to run between \$60,000 to \$90,000. Mayor Hogue asked council how they wanted to move forward with the event.

Direction from council based on the short timeframe and funding collected was to direct staff to organize the event with the following included:

- Date – Hold the Grand Opening on June 18, 2011 (Saturday)
- Time - 10:00 a.m.
- Event Agenda: Presentations, Ribbon Cutting and tours of the new facilities.
- Research the possibility of the Police Officers providing a gun salute.
- Research the possibility of the Fire Department providing the Honor Guard Presentation
- Research the possibility of the Wylie High School Bands performing the National Anthem.
- Direct staff to secure the staging and sound for the event.
- Refund food vendor fees to the applicants that had submitted an application for the event and notify them of the Celebration that will be held in 2012 for the 125<sup>th</sup> Anniversary of the City of Wylie.

Councilwoman Spillyards asked that staff create a letter to be sent to businesses committing funds asking them if the funds could be used in 2012 for the larger event to celebrate the 125<sup>th</sup> Anniversary of the City of Wylie.

## **ADJOURNMENT**

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With no further discussion a motion was made by Councilman Goss, seconded by Councilman White to adjourn the meeting at 6:35 p.m. A vote was taken and the motion passed unanimously.

**ATTEST:**

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**Eric Hogue, Mayor**

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**Carole Ehrlich, City Secretary**







# Wylie City Council

## AGENDA REPORT

Meeting Date:	5-10-11	Item Number:	B.
Department:	City Manager/WEDC		(City Secretary's Use Only)
Prepared By:	Sam Satterwhite	Account Code:	
Date Prepared:	5-2-11	Budgeted Amount:	
		Exhibits:	1

### Subject

Consider, and act upon, authorizing the City Manager to terminate an Ad Valorem Tax Abatement and Sales Tax Reimbursement Agreement between the City of Wylie, the Wylie Economic Development Corporation, Greenway-Springs, Ltd., Greenway-Columbia, L.P., and Greenway-Wylie, L.P.

### Recommendation

Motion to authorize the City Manager to terminate an Ad Valorem Tax Abatement and Sales Tax Reimbursement Agreement between the City of Wylie, the Wylie Economic Development Corporation, Greenway-Springs, Ltd., Greenway-Columbia, L.P., and Greenway-Wylie, L.P.

### Discussion

Executed on 12-20-07, the attached Ad Valorem Tax Abatement and Sales Tax Reimbursement Agreement utilizes a combination of property tax abatement and sales tax reimbursements to facilitate the remediation of a landfill located on 19 acres owned by Greenway and located to the west of Home Depot and to the south of Tractor Supply. After being enrolled in the Voluntary Cleanup Program, the landfill site has since received a Certificate of Completion from the TCEQ. Since 2007 ad valorem taxes have been abated by the City of Wylie in the amount of \$37,055.31 with sales taxes reimbursed by the WEDC in the amount of \$4,973.30. The WEDC has confirmed that expenses paid by Greenway related to the Certificate of Completion equal \$140,000.

On March 11, 2011, Greenway representatives notified the WEDC in writing of their request to terminate the Abatement/Sales Tax Agreement. Greenway is requesting termination due to its pending sale of a 0.97 acre tract adjacent to the Dry Clean Super Center of Wylie. Being that the abatement is provided to the property owner (current or future); there are also performance requirements per the Agreement that could potentially create a liability for the buyer. Therefore, the buyer is requiring that termination be in effect prior to closing to forego any future liability.

Being that there are still development requirements which need to be met prior to the term of the Agreement expiring in 2017, the City and WEDC could require that the \$42,028.61 in incentives paid/abated be returned prior to termination. Based upon the primary goal of the incentive agreement being to receive a Certificate of Completion from the TCEQ, the WEDC Board of Directors was not inclined to require the return of \$4,973.30 in sales taxes reimbursed. Further, the WEDC Board formally recommends to the City Council that it authorize the City Manager to Terminate the Greenway Agreement and waive all claims to abated taxes equaling \$37,055.31.

### Approved By

Department Director

City Manager

Initial

SS

Date

05-03-2011

5/5/11

THE STATE OF TEXAS     §  
                                     §  
COUNTY OF COLLIN     §

**AD VALOREM TAX ABATEMENT & SALES TAX REIMBURSEMENT AGREEMENT**

This Ad Valorem Tax Abatement & Sales Tax Reimbursement Agreement (the "Agreement") is entered into by and amongst the **CITY OF WYLIE, TEXAS**, a home-rule municipality of Collin County, Texas, ("City"); the **WYLIE ECONOMIC DEVELOPMENT CORPORATION, TEXAS**, a Texas corporation, ("WEDC"); **GREENWAY-SPRINGS, LTD**, a Texas limited partnership ("Greenway-Springs"); **GREENWAY-COLUMBIA, L.P.**, a Texas limited partnership ("Greenway-Columbia"); and **GREENWAY-WYLIE, L.P.**, a Texas limited partnership ("Greenway-Wylie").

**W I T N E S S E T H:**

**WHEREAS**, section 312.002(a) of the Texas Tax Code requires the City to pass a resolution indicating the City's desire to become eligible to participate in tax abatement agreements; and

**WHEREAS**, the City Council of the City has previously adopted a resolution stating that the City elected to be eligible to participate in tax abatements; and

**WHEREAS**, the City Council of the City has previously adopted Tax Abatement Guidelines and Criteria, pursuant to section 312.002 of the Texas Tax Code, by Resolution Number 2007-38(R), referred to as the Policy Statement; and

**WHEREAS**, the Policy Statement constitutes appropriate guidelines and criteria governing tax abatement agreements to be entered into by the City as contemplated by the Property Redevelopment and Tax Abatement Act, Chapter 312 of the Texas Tax Code (the "Act"); and

**WHEREAS**, on the 13th day of November, 2007, the City Council of the City passed Ordinance No. 2007-39\_\_\_\_, (hereinafter referred to as the "Ordinance") establishing Reinvestment Zone No. 6, City of Wylie, Texas, for commercial-industrial tax abatement, as authorized by Chapter 312 of the Texas Tax Code, as amended on approximately 27.830 acres of land more particularly described in Exhibit "A" attached hereto (the "Zone"); and

**WHEREAS** Greenway-Springs, Ltd, Greenway-Columbia, L.P. and Greenway-Wylie, L.P. (collectively the "Property Owners") own all the real property within the Zone; and

**WHEREAS**, Greenway-Springs owns 15.72 acres of land, more or less, within the Zone (the "Greenway-Springs Property"), Greenway-Columbia owns 8.1215 acres of land, more or less, within the Zone (the "Greenway-Columbia Property"), and Greenway-Wylie owns 2.1869 acres of land, more or less, within the Zone (the "Greenway-Wylie Property") as more fully depicted on Exhibit "B" attached hereto and collectively referred to as the "Zone Properties"; and

**WHEREAS**, the City and WEDC have concluded that the improvements to be constructed by the Property Owners on the Zone Properties constitute a "project", as that term is defined in Article 5190.6, Vernon's Ann. Civ. Stat., and is willing to provide the Property Owners with economic assistance using tax abatements and sales tax reimbursement as hereinafter set forth on the terms and subject to the conditions as stated herein and the Property Owners are willing to accept the same subject to all terms and conditions contained in this Agreement; and

**WHEREAS**, the City and the WEDC has determined that it is in the best interest of the public and the City and that it promotes the purposes authorized by the voters of the City of Wylie for which the WEDC was established to encourage the development and use of industrial and commercial properties within the City; and

**WHEREAS**, the Property Owners acknowledge the requirement to remediate certain environmental contaminations present on the Greenway-Springs Property located in the Zone. as more fully described herein; and

**WHEREAS**, the Property Owners have committed to construct facilities on the Zone Properties being retail and commercial space of not less than thirty two thousand (32,000) square feet with a taxable value of such improvements to real property being not less than four million seven hundred thousand dollars (\$4,700,000.00); and

**WHEREAS**, the Property Owners acknowledge and agree that the tax abatements and other economic incentives granted by this Agreement are contingent upon their collective compliance with this Agreement in accordance with the terms and conditions set forth herein; and

**WHEREAS**, the tax abatement will maintain and enhance the commercial economic and employment base of the Wylie area thereby benefiting the City in accordance with the Policy Statement and the Property Redevelopment and Tax Abatement Act; and

**WHEREAS**, the contemplated use and improvement of the Zone Properties in the amounts and for the purposes set forth in this Agreement and the other terms hereof are consistent with encouraging development of said Reinvestment Zone No. 6, City of Wylie, Texas, in accordance with the purposes for its creation and are in compliance with the Policy Statement and the Ordinance and similar guidelines and criteria adopted by the City and all applicable law; and

**WHEREAS**, the Property Owners acknowledge and agree that only that taxable value of the Zone Properties exceeding the 2007 taxable value of each Zone Property as determined by the Collin County Central Appraisal District which the parties agree is the sum of three million five hundred eighty three thousand seven hundred twenty eight dollars (\$3,583,728.00) ("Base Year Value") shall be abated, beginning with the 2008 tax year; and

**WHEREAS**, this Agreement was approved by the City at a regularly scheduled meeting on DECEMBER 11, 2007 consistent with section 312.207(a) of the Texas Tax Code and the Agreement was approved by the Board of Directors of the Wylie Economic Development Corporation on DECEMBER 19, 2007.

**NOW THEREFORE** the parties hereto do mutually agree as follows:

**SECTION 1. Findings Incorporated.**

All the above premises are hereby found to be true and correct and are hereby approved and incorporated into the body of this Agreement as if copied in their entirety.

**SECTION 2. Property Subject to Tax Abatement and Sales Tax Reimbursements.**

Subject to the Property Owners' compliance with the terms and conditions of this Agreement, each Zone Property is entitled to an ad valorem tax abatement from the City and a sales tax incentive from the WEDC more fully described herein in each year beginning January 1, 2008 and provided that the taxable value of

each Zone Property as determined by the Collin County Central Appraisal District each year exceeds each Zone Property's respective Base Year Value.

### **SECTION 3. Requirements of Property Owners to Qualify for Tax Abatement and Sales Tax Rebates.**

#### **3.1 Environmental Remediation and Remediation Cost Certification**

- (a) Upon the effective date of this Agreement, Property Owners shall begin the environmental remediation of the Greenway-Springs Property through the Texas Commission on Environmental Quality (TCEQ) Voluntary Cleanup Program and shall obtain issuance of a Final Certificate of Completion from TCEQ by June 30, 2009.
- (b) Property Owners shall identify those costs which are associated with the required environmental remediation ("Remediation Costs") and shall provide to the City and WEDC a certificate identifying and describing the costs spent in a format acceptable to City and WEDC on at least an annual basis until the remediation is completed. The Remediation Costs may include eligible costs expended prior to the execution of this Agreement. Remediation Costs to be identified shall be those costs identified and described in Exhibit "C", attached hereto; provided, however, no Remediation Costs may be reimbursed unless the cost is actually incurred. In addition, the procedure for determining the reasonableness and necessity of the Remediation Costs is identified and described in Exhibit "C".
- (c) Upon completion of the environmental remediation efforts, Property Owners shall calculate the total Remediation Costs plus the estimated costs of Post Closure Care of Remaining Waste and shall provide to the City and WEDC a final certificate identifying and describing the total costs spent (the "Total Remediation Costs"). The Total Remediation Costs shall be determined and submitted to the City prior to March 1, 2012.

#### **3.2 Improvements Required**

Property Owners shall construct retail and commercial facilities of not less than thirty two thousand (32,000) square feet on the Zone Properties with a taxable value of improvements to real property as determined by the Collin Central Appraisal District upon completion and occupancy of not less than four million seven hundred thousand dollars (\$4,700,000.00) excluding land costs. Said improvements on the Zone Properties shall be completed and certificates of occupancy issued by the City on or before January 1, 2016.

#### **3.2 Employee Hiring**

At least twenty (20) full time jobs will be created and maintained within the zone for a period of at least six (6) consecutive months no later than July 1, 2013.

### **SECTION 4. Tax Abatement.**

#### **4.1 Ad Valorem Tax Abatement – Greenway-Springs**

Subject to the terms and conditions of this Agreement and provided the Property Owners are not in default, separately or collectively, and subject to the rights and holders of any outstanding bonds of the City, a portion of ad valorem taxes assessed upon the Greenway-Springs Property and otherwise owed to the City shall be abated as follows:

- (a) Term. The tax abatement period for the Greenway-Springs Property shall expire on the earlier of ten (10) years beginning January 1, 2008, or the date the aggregate abatement of ad valorem taxes by the City and sales tax reimbursements (as addressed in Section 5) by the WEDC and payment of economic incentives from any other governmental entity to Property Owners for the Zone Properties equals the Total Remediation Costs; provided, however, said sum of the tax abatements and the sales tax reimbursements in Section 5, along with any abatements or reimbursements provided by Collin County, if any, for the Zone Properties shall not exceed two million dollars (\$2,000,000.00). The first year of tax abatement shall begin January 1, 2008.
- (b) Abatement Amount. The tax abatement rate for each such year during the tax abatement period shall be the following percentage of the taxable value of the Greenway-Springs Property that exceeds the Base Year Value of the Greenway-Springs Property, and such qualifications as noted elsewhere in this Agreement:

Year of Tax Abatement Period	Abatement Percentage
One	80%
Two	80%
Three	80%
Four	80%
Five	80%
Six	80%
Seven	80%
Eight	80%
Nine	80%
Ten	80%

#### 4.2 Ad Valorem Tax Abatement – Greenway-Columbia

Subject to the terms and conditions of this Agreement and provided the Property Owners are not in default, separately or collectively and subject to the rights and holders of any outstanding bonds of the City, a portion of ad valorem taxes assessed upon the Greenway-Columbia Property and otherwise owed to the City shall be abated as follows:

- (a) Term. The tax abatement period for the Greenway-Columbia Property shall expire on the earlier of ten (10) years beginning January 1, 2008, or, the date the aggregate abatement of ad valorem taxes by the City and sales tax reimbursements (as addressed in Section 5) by the WEDC and payment of economic incentives from any other governmental entity to Property Owners for the Zone Properties equals the Total Remediation Costs; provided, however, said sum of the tax abatements and the sales tax reimbursements in Section 5, along with any abatements or reimbursements provided by Collin County, if any, for the Zone Properties shall not exceed two million dollars (\$2,000,000.00). The first year of tax abatement shall begin January 1, 2008.
- (b) Abatement Amount. The tax abatement rate for each such year during the tax abatement period shall be the following percentage of the taxable value of the Greenway-Columbia Property that exceeds the Base Year Value of the Greenway-Columbia Property, and such qualifications as noted elsewhere in this Agreement:

Year of Tax Abatement Period	Abatement Percentage
One	80%
Two	80%
Three	80%
Four	80%
Five	80%
Six	80%
Seven	80%
Eight	80%
Nine	80%
Ten	80%

#### 4.3 Ad Valorem Tax Abatement – Greenway-Wylie

Subject to the terms and conditions of this Agreement and provided the Property Owners are not in default, separately or collectively, and subject to the rights and holders of any outstanding bonds of the City, a portion of ad valorem taxes assessed upon the Greenway-Wylie Property and otherwise owed to the City shall be abated as follows:

- (a) Term. The tax abatement period for the Greenway-Wylie Property shall expire on the earlier of ten (10) years beginning January 1, 2008, or the date the aggregate abatement of ad valorem taxes by the City and sales tax reimbursements (as addressed in Section 5) by the WEDC and payment of economic incentives from any other governmental entity to Property Owners for the Zone Properties equals the Total Remediation Costs; provided, however, said sum of the tax abatements and the sales tax reimbursements in Section 5, along with any abatements or reimbursements provided by Collin County, if any, for the Zone Properties shall not exceed two million dollars (\$2,000,000.00). The first year of tax abatement shall begin January 1, 2008.
- (b) Abatement Amount. The tax abatement rate for each such year during the tax abatement period shall be the following percentage of the taxable value of the Greenway-Wylie Property that exceeds the Base Year Value of the Greenway-Wylie Property, and such qualifications as noted elsewhere in this Agreement:

Year of Tax Abatement Period	Abatement Percentage
One	80%
Two	80%
Three	80%
Four	80%
Five	80%
Six	80%
Seven	80%
Eight	80%
Nine	80%
Ten	80%

## SECTION 5. Sales Tax Reimbursement

### 5.1 Sales Tax Reimbursement – Greenway-Springs Property

Subject to the terms of this Agreement and provided the Property Owners are not in default, separately or collectively, the WEDC will provide Greenway-Springs economic assistance in the form of quarterly performance reimbursement incentives with the first quarterly period beginning January 1, 2008, in the following amounts on the Greenway-Springs Property:

<u>Current Property Ownership</u>	<u>Acreage</u>	<u>Annual Sales Tax Reimbursement</u>
Greenway Springs, LTD	15.72	one-half of one percent (0.5%) of the taxable sales receipts generated on the tract

- (a) Time for Payments. Payments shall be made to Greenway-Springs by WEDC within forty-five (45) days following the end of each quarter of the calendar year, or within thirty (30) days of Greenway-Springs providing WEDC with a sales tax report from the Texas State Comptroller of the sales tax receipts generated from the retail sales of retail businesses operated on the Greenway-Springs Property for the previous ending calendar quarter period, together with such supporting documentation required herein, and as WEDC may reasonably request.
- (b) Term. The sales tax reimbursement period shall expire on the earlier of ten (10) years beginning January 1, 2008, or the date the aggregate abatement of ad valorem taxes by the City and sales tax reimbursements by the WEDC and payment of economic incentives from any other governmental entity to Property Owners for the Zone Properties equals the Total Remediation Costs; provided, however, said sum of the sales tax abatements and sales tax reimbursement, along with any abatements or reimbursements provided by Collin County, if any, paid to the Property Owners shall not exceed two million dollars (\$2,000,000.00).

### 5.2 Sales Tax Reimbursement – Greenway Columbia Property

Subject to the terms of this Agreement and provided the Property Owners are not in default, separately or collectively, the WEDC will provide Greenway Columbia economic assistance in the form of quarterly performance reimbursement incentives with the first quarterly period beginning January 1, 2008, in the following amounts on the Greenway- Columbia Property:

<u>Current Property Ownership</u>	<u>Acreage</u>	<u>Annual Sales Tax Reimbursement</u>
Greenway Columbia, LP	8.12	one-quarter of one percent (0.25%) of the taxable sales receipts generated on the tract

- (a) Time for Payments. Payments shall be made to Greenway-Columbia by WEDC within forty-five (45) days following the end of each quarter of the calendar year, or within thirty (30) days of Greenway-Columbia providing WEDC with a sales tax report from the Texas State Comptroller

of the sales tax receipts generated from the retail sales of retail businesses operated on the Greenway-Columbia Property for the previous ending calendar quarter period, together with such supporting documentation required herein, and as WEDC may reasonably request.

- (b) Term. The sales tax reimbursement period shall expire on the earlier of ten (10) years beginning January 1, 2008, or the date the aggregate abatement of ad valorem taxes by the City and sales tax reimbursements by the WEDC and payment of economic incentives from any other governmental entity to Property Owners for the Zone Properties equals the Total Remediation Costs; provided, however, said sum of the sales tax abatements and sales tax reimbursement, along with any abatements or reimbursements provided by Collin County, if any, paid to the Property Owners shall not exceed two million dollars (\$2,000,000.00).

### 5.3 Sales Tax Reimbursement – Greenway Wylie Property

Subject to the terms of this Agreement and provided the Property Owners are not in default, separately or collectively, the WEDC will provide Greenway-Wylie economic assistance in the form of quarterly performance reimbursement incentives with the first quarterly period beginning January 1, 2008, in the following amounts on the Greenway - Wylie Property:

<u>Current Property Ownership</u>	<u>Acreage</u>	<u>Annual Sales Tax Reimbursement</u>
Greenway Wylie, LP (Lot 6)	0.97	one-quarter of one percent (0.25%) of the taxable sales receipts generated on the tract
Greenway Wylie, LP (Lot 7)	1.21	one-quarter of one percent (0.25%) of the taxable sales receipts generated on the tract

- (a) Time for Payments. Payments shall be made to Greenway-Wylie by WEDC within forty-five (45) days following the end of each quarter of the calendar year, or within thirty (30) days of Greenway-Wylie providing WEDC with a sales tax report from the Texas State Comptroller of the sales tax receipts generated from the retail sales of retail businesses operated on the Greenway-Wylie Property for the previous ending calendar quarter period, together with such supporting documentation required herein, and as WEDC may reasonably request.
- (b) Term. The sales tax reimbursement period shall expire on the earlier of ten (10) years beginning January 1, 2008, or the date the aggregate abatement of ad valorem taxes by the City and sales tax reimbursements by the WEDC and payment of economic incentives from any other governmental entity to Property Owners for the Zone Properties equals the Total Remediation Costs; provided, however, said sum of the sales tax abatements and sales tax reimbursement, along with any abatements or reimbursements provided by Collin County, if any, paid to the Property Owners shall not exceed two million dollars (\$2,000,000.00).



## **SECTION 6. Use of Property.**

As consideration for the agreements of City and WEDC contained herein, Property Owners agree that they will diligently and faithfully in a good and workmanlike manner pursue the commencement and completion of the environmental remediation on the Greenway-Springs Property consistent with the requirements set forth herein. Property Owners agree that the environmental remediation will be in accordance with all applicable federal, state, and local laws and regulations. The Zone Properties shall be limited in their use to commercial-industrial real property consistent with the City's development goals which is the encouraging of development or redevelopment of the Zone.

## **SECTION 7. Default and Recapture Provision.**

### **(a) Event of Default.**

In the event that (1) Property Owners, separately or collectively, fail to obtain a Final Certificate of Completions from TCEQ in accordance with this Agreement; or (2) Property Owners, separately or collectively, allow their real or personal property taxes owed the City to become delinquent and fail to timely and properly follow the legal procedures for protest and/or contest of any such taxes; or (3) Property Owners, separately or collectively, fail to maintain the Greenway-Springs Property in compliance with applicable environmental laws; or (4) Property Owners, separately or collectively, breach any of the terms or conditions of this Agreement, then the Property Owners shall be in default. In the event that any Property Owner defaults in its performance of (1), (2), (3), or (4) above, then the City and/or WEDC shall give the Property Owners written notice of such default and if the Property Owners have not cured any default within thirty (30) days of said written notice this Agreement shall may be terminated by the City.

In the event of default by the Property Owners, separately or collectively, City shall be entitled to reimbursement of the ad valorem taxes abated as described above and the WEDC shall be entitled to reimbursement of the sales tax reimbursement paid as described above. In addition, City and WEDC shall be entitled to any other remedies available at law or equity.

- (b) Upon the occurrence of default by City and/or WEDC, one or more of the Property Owners shall give written notice of such default and if City and/or WEDC have not cured the default within thirty (30) days within said written notice, this Agreement may be terminated by any Property Owner. Property Owners shall have the right to seek specific performance of this Agreement as their sole and exclusive remedy.

### **(c) Notice, Effect of Default.**

Notice shall be in writing and shall be delivered by personal delivery or certified mail, return receipt requested, or overnight delivery to the addresses below.

#### **Notice to Greenway:**

Todd Petty, Vice President of the General Partner  
Greenway Springs, LTD  
2808 Fairmount, Suite 100  
Dallas, TX 75201

**With Copy to:**

The Marshall Firm, PC  
302 N. Market, Suite 510  
Dallas, TX 75202

**Notice to WEDC:**

Sam Satterwhite, Executor Director  
Wylie Economic Development Corporation  
108-C W. Marble  
Wylie, Texas 75098

**Notice to City:**

Mindy Manson, City Manager  
City of Wylie  
2000 Hwy. 78N  
Wylie, Texas 75098

**With Copy to:**

Abernathy, Roeder, Boyd & Joplin, P.C.  
ATTN: Richard Abernathy, City Attorney  
1700 Redbud Blvd., Suite 300  
McKinney, Texas 75069

**SECTION 8. Right of Access for Inspection.**

Property Owners further agree that the City and WEDC and their agents and employees, shall have reasonable right to access to the Zone Properties to inspect the environmental remediation, construction of the improvements described in Section 3 and other items subject to this Agreement in order to ensure that the same are in accordance with this Agreement and all applicable federal, state, and local laws and regulations. After completion of the environmental remediation and the construction of the improvements described in Section 3.1, the City and WEDC shall have the continuing right of inspection to ensure that such are thereafter maintained and operated in accordance with this Agreement and applicable law.

**SECTION 9. Verification and Compliance.**

The Property Owner will allow the City and WEDC to audit, if necessary, all of the Property Owner's records, documents, agreements and other instruments in furtherance of the following purposes: (i) to ensure the Property Owner's compliance with the affirmative covenants set forth in this Agreement; (ii) to determine the existence of an Event of Default under the terms of this Agreement; (iii) to ensure compliance with any other terms and conditions set forth herein or any related documents. City and WEDC will provide Property Owner with written notice of any request for an audit and shall cooperate with Property Owner to schedule audit activities so as to minimize disruption to Property Owner's normal business operations.

## SECTION 10. Annual Certification.

On or before April 1 of each year, each Property Owner shall provide to City and WEDC written certification that each Property Owner is in compliance with each applicable term of this Agreement. Such certification shall be in a form reasonably satisfactory to the City and WEDC, and shall include, at a minimum, information supporting each Property Owner's conclusions that it met (or expects to meet) each condition and requirement to abatement set forth in this Agreement. Any failure of the City or WEDC to request or demand such certification shall not constitute a waiver of such certification or any future certification.

## SECTION 11. Authorization to Sign this Agreement.

This Agreement was authorized by Resolution of the City Council at its council meeting on the 11<sup>th</sup> day of December, 2007, authorizing the City Manager to execute the Agreement on behalf of the City.

This Agreement was entered into by Greenway Springs on the 20<sup>TH</sup> day of DECEMBER 2007, pursuant to authority granted to TODD PETTY, VICE President, of Greenway SPRINGS GP, LLC, ITS: GENERAL PARTNER

This Agreement was entered into by Greenway Columbia on the 20<sup>TH</sup> day of DECEMBER 2007, pursuant to authority granted to TODD PETTY, VICE President, of Greenway COLUMBIA GP, LLC, ITS: GENERAL PARTNER

This Agreement was entered into by Greenway Wylie on the 20<sup>TH</sup> day of DECEMBER 2007, pursuant to authority granted to TODD PETTY, VICE President, of Greenway WYLIE GP, LLC, ITS: GENERAL PARTNER

This Agreement was entered into by WEDC on the 19<sup>TH</sup> day of DECEMBER 2007, pursuant to authority granted to Samuel Satterwhite, Executive Director, WEDC.

## SECTION 12. Miscellaneous Provisions.

- (a) **Binding Agreement.** This document shall constitute a valid and binding agreement among the City, WEDC and Property Owners when executed.
- (b) **Severability.** If a court of competent jurisdiction finds any provision of this Agreement to be invalid or unenforceable as to any person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other persons or circumstances. It is the intention and agreement of the parties to this Agreement that each such illegal, invalid or unenforceable provision shall be amended by the parties hereto to the extent necessary to make it legal, valid and enforceable while achieving the same objective of such provision, or, if that is not possible, by substituting therefore another provision that is legal, valid and enforceable and achieves the same objectives (or, if such provision cannot be amended or a provision substituted therefore in a manner that is legal, valid and enforceable and achieves the same objectives, then such provision shall be amended or a new provision substituted therefore that achieves as closely as possible the same objectives or economic position as the illegal, invalid or unenforceable provision, irrespective of whether such amendment or substituted provision is materially different than the illegal, invalid or unenforceable provision).

- (c) **Default.** Notwithstanding any provision in this Agreement to the contrary Property Owner's, WEDC's and City's only liability for breaching any provision of this Agreement shall be the remedies expressly set forth in this Agreement.
- (d) **Entire Agreement.** This Agreement contains the entire agreement of the parties with respect to the matters contained herein and may not be modified or terminated except upon the provisions hereof or by the mutual written agreement of the parties hereto.
- (e) **Venue.** This Agreement shall be construed in accordance with the laws of the State of Texas and shall be performable in Collin County, Texas. In the event of a lawsuit, venue shall be in Collin County, Texas.
- (f) **Consideration.** This Agreement is executed by the parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.
- (g) **Counterparts.** This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.
- (h) **Representations.** Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had an opportunity to confer with its counsel.
- (i) **Miscellaneous Drafting Provisions.** This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply. Headings in this Agreement are for the convenience of the parties and are not intended to be used in construing this document.
- (j) **Sovereign Immunity.** Except to the extent authorized by law, the parties agree that no party has waived its sovereign immunity by entering into and performing their respective obligations under this Agreement, except that City and WEDC hereby waive their immunity from suit, if any, solely for the purpose of allowing enforcement of this Agreement.
- (k) **Assignment.** This Agreement or any part thereof shall not be assigned or transferred by any party without the prior written consent of the other party, which consent shall not be unreasonably withheld. In the event of an assignment, the assignment is not effective until written notice is given to the City and WEDC of the name, address, phone number, and email address of the assignee.

The Agreement is performable in Collin County, Texas, to be effective as of the 20<sup>th</sup> of December, 2007 (the "Effective Date").

ATTEST:

  
Carole Ehrlich, City Secretary



CITY OF WYLIE, TEXAS,


  
Mindy Manson, City Manager

WYLIE ECONOMIC DEVELOPMENT  
CORPORATION

  
Samuel Satterwhite, Executive Director


GREENWAY-SPRINGS, LTD

**BY: GREENWAY-SPRINGS, LLC, ITS GENERAL PARTNER**

By:   
Print Name: TODD PETTY  
Title: VP OF GENERAL PARTNER  
Date: 12-20-07


GREENWAY-COLUMBIA, L.P.

**BY: GREENWAY-COLUMBIA, LP, ITS GENERAL PARTNER**

By:   
Print Name: TODD PETTY  
Title: VP OF GENERAL PARTNER  
Date: 12-20-07

GREENWAY-WYLIE, L.P.

**BY: WYLIE GP, LLC, ITS GENERAL PARTNER**

By:   
Print Name: TODD PETTY  
Title: VP OF GENERAL PARTNER  
Date: 12-20-07

# REINVESTMENT ZONE No. 6

Exhibit "A"

BEING a tract of land situated in the Duke Strickland Survey, Abstract No. 841, and the E.C. Davidson Survey, Abstract No. 267, in the City of Wylie, Collin County, Texas, and being all of that same tract of land as described in deed to Greenway-Columbia, L.P. recorded in Volume 5890, Page 5358 in the Deed Records of Collin County, Texas (DRCCT), and all of that same tract of land as described in deed to Greenway-Columbia, L.P. recorded in Volume 6026, Page 1681 DRCCT, and all of Lot 6 and Lot 7, Block A of The Greenway Addition, an addition to the City of Wylie, Texas, according to the plat thereof recorded in Volume O, Page 287 in the Map Records of Collin County, Texas (MRCCT), and a portion of Lot 2, Block A of Westgate Center, Phase One, an addition to the City of Wylie, Texas, according to the plat thereof recorded in Volume L, Page 659 MRCCT, and a portion of the Kansas City Southern Railroad right-of-way as described by deed recorded in Volume 4983, Page 3109 DRCCT, and being more particularly described as follows:

BEGINNING at the intersection of the south line of F.M. Highway No. 544 (W. Kirby Street) (variable width right-of-way), with the northwest line of said Kansas City Southern Railroad right-of-way (150 feet wide);

THENCE southerly and southwesterly, along the northwest line of said Kansas City Southern Railroad right-of-way the following:

S 04°01'17" W, 139.02 feet to the point of curvature of a non-tangent circular curve to the right having a radius of 522.89 feet;

Southwesterly, along said curve to the right, through a central angle of 48°10'49", an arc distance of 439.70 feet and having a chord which bears S 28°06'08" W, 425.86 feet;

S 52°11'37" W, 34.25 feet;

S 55°11'01" W, 482.89 feet;

THENCE S 02°30'15" W, departing the northwest line of said Kansas City Southern Railroad right-of-way, 6.13 feet;

THENCE S 52°15'30" W, 1032.28 feet;

THENCE S 55°04'29" W, 100.12 feet to the intersection of the west line of Westgate Way (100 foot right-of-way) at this point with the northwest line of said Kansas City Southern Railroad right-of-way, said point also being the southeast corner of Lot 2, Block A of said Westgate Center, Phase One;

THENCE S 52°16'00" W, along the northwest line of said Kansas City Southern Railroad right-of-way and south line of said Lot 2, Block A, 790.00 feet to the southwest corner of said Lot 2, Block A, same being the southeast corner of the Sander Addition, an addition to the City of Wylie, Texas, according to the plat thereof recorded in Volume G, Page 543 MRCCT;

THENCE N 00°03'22" E, departing the northwest line of said Kansas City Southern Railroad right-of-way, along the west line of said Lot 2, Block A and east line of said Sander Addition, 1392.96 feet to the southwest corner of Lot 2A, Block A of Westgate Center, Phase One, an addition to the City of Wylie, Texas, according to the plat thereof recorded in Volume M, Page 632 MRCCT;

THENCE S 89°56'36" E, departing the west line of said Lot 2, Block A and east line of said Sander Addition, along the south line of said Lot 2A, Block A, 519.10 feet to the southeast corner of said Lot 2A, Block A, and lying in the west line of Westgate Way (65 foot right-of-way) at this point;

THENCE N 28°32'19" E, crossing said Westgate Way, 67.80 feet to a point in the east line of said Westgate Way at the westerly corner of Lot 6, Block A of said The Greenway Addition;

THENCE N 45°03'22" E, departing the east line of said Westgate Way, along the northwest line of said Lot 6, Block A, 205.96 feet;

THENCE S 87°45'43" E, along the north line of said Lot 6, Block A, 155.60 feet;

THENCE S 32°00'57" W, along the southeast line of said Lot 6, Block A, 311.54 feet;

THENCE S 64°33'30" W, along the southeast line of said Lot 6, Block A, 41.03 to a point in the east line of said Westgate Way, and lying in a non-tangent circular curve to the right having a radius of 357.50 feet;

THENCE southerly, along the east line of said Westgate Way the following:

Southeasterly, along said curve to the right, through a central angle of 25°41'11", an arc distance of 160.27 feet and having a chord which bears S 08°16'36" E, 158.93 feet;

S 04°34'00" W, 339.46 feet to the northwest corner of Lot 7, Block A of said The Greenway Addition;

THENCE S 85°26'00" E, departing the east line of said Westgate Way, along the north line of said Lot 7, Block A, 279.24 feet;

THENCE S 37°44'30" E, along the northeast line of said Lot 7, Block A, 59.26 feet to a point in the northwest line of said Kansas City Southern Railroad right-of-way;

THENCE N 52°15'31" E, along the northwest line of said Kansas City Southern Railroad right-of-way, 702.98 feet to the southeast corner of Lot 3, Block A of said The Greenway Addition, same being the southwest corner of said Greenway-Columbia, L.P. tracts;

THENCE northerly, along the east line of said The Greenway Addition and west line of said Greenway-Columbia, L.P. tracts the following:

N 02°30'15" E, 272.02 feet;

N 87°32'59" W, 50.32 feet;

N 02°22'01" E, 102.06 feet;

S 87°41'09" E, 51.24 feet;

N 02°14'17" E, 453.59 feet to a point in the south line of said F.M. Highway No. 544;

THENCE easterly, along the south line of said F.M. Highway No. 544 the following:

N 89°42'51" E, 126.08 feet to the point of curvature of a non-tangent circular curve to the right having a radius of 5,669.58 feet;

Southeasterly, along said curve to the right, through a central angle of 02°14'00", an arc distance of 220.99 feet and having a chord which bears S 89°10'11" E, 220.98 feet;

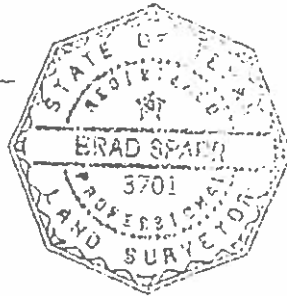
S 88°03'09" E, 60.03 feet;

S 57°59'23" E, 197.84 feet to the POINT of BEGINNING and containing 27.830 acres of land.

This document was prepared under 22 TAC §663.21, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared.



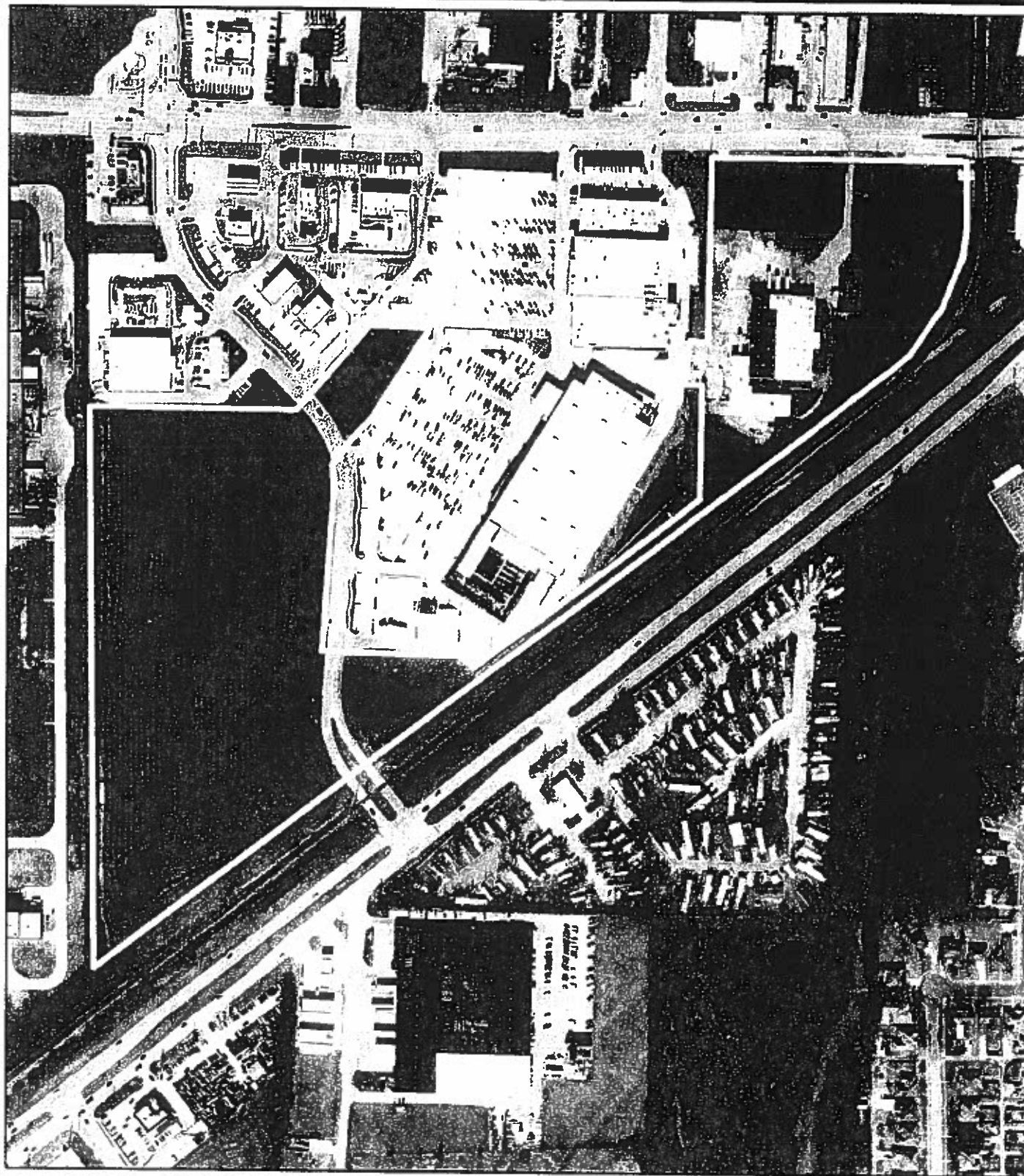
Brad Sparr  
Registered Professional  
Land Surveyor No. 3701



Sparr Surveys  
2553 C.R. 722  
McKinney, TX 75069  
(214) 544-2297



## REINVESTMENT ZONE NUMBER 6



0 115 230 460 Feet

Chris Holsted, P.E.  
City Engineer  
949 Hensley Lane  
Wylie, Texas 75098

## Exhibit "B"

### THE ZONE PROPERTIES

#### Greenway -Springs

Being Lot 2, Block A, replat of Lot 1, Block A, Westgate Center, Phase One, an Addition to the City of Wylie, Texas according to the map thereof recorded in Volume L, Page 659, Map Records, Collin County, Texas. Save and except a 3.13448 acre tract conveyed to Greenville-TSC, LTD. pursuant to Deed filed 03/21/2001, recorded in Volume 4880, Page 2840, Land Records, Collin County, Texas.

The above description is the same as described in Title Commitment No.02RO6489 from American Title Insurance Company.

#### Greenway-Columbia

DESCRIPTION of a 8.300 acre tract of land situated in the E.C. Davidson Survey, Abstract No. 267, in the City of Wylie, Collin County, Texas: said tract being all of that tract of land described in Special Warranty Deed With Vendor's Lien to Greenway-Columbia, L.P., recorded in Volume 5890, Page 5358, and Special Warranty Deed recorded in Volume 6026, Page 1681 of the Deed Records of Collin County, Texas: said 8.300 acre tract being more particularly described as follows:

BEGINNING, at a 1/2-inch iron rod with "Pacheco Koch" cap found at the intersection of the south line of F.M. Highway No. 544 (W. Kirby Street) (a variable width right-of-way) with the northwest line of the Kansas City Southern Railroad (a 100-foot right-of-way) as recorded in Volume 4983, Page 3109 of the said Deed Records:

THENCE, in a southerly direction along the said northwest line of the Kansas City Southern Railroad, the following four (4) calls:

South 04 degrees, 00 minutes, 56 seconds West, a distance of 139.37 feet to a 1/2-inch iron rod with "Pacheco Koch" cap found for corner: said point being the beginning of a non-tangent curve to the right:

Southwesterly along said curve to the right, having a central angle of 48 degrees, 10 minutes, 49 seconds, a radius of 522.89 feet, a chord bearing and distance of South 28 degrees, 05 minutes, 47 seconds West, 426.86 feet, an arc distance of 439.70 feet to a 1/2-inch iron rod with "Pacheco Koch" cap found for the end of said curve;

South 52 degrees, 11 minutes, 16 seconds West, a distance of 34.25 feet to a 1/2-inch iron rod with "Pacheco Koch" cap found for corner:

South 55 degrees, 10 minutes, 40 seconds West, a distance of 489.18 feet to a 1/2-inch iron rod with yellow cap found for corner: said point being the southeast corner of Block A, The Greenway Addition, an addition to the City of Wylie, Texas, according to the plat recorded in

Cabinet O. Page 287, of the Map Records of Collin County,  
Texas:

THENCE, along the east line of said Block A, the following five (5) calls:

North 02 degrees, 24 minutes, 14 seconds East, a distance of 272.38 feet to a 1/2-inch iron rod found for corner;

North 87 degrees, 53 minutes, 07 seconds West, a distance of 50.22 feet to a 1/2-inch iron rod with "PATE 3917" cap found for corner;

North 02 degrees, 59 minutes, 10 seconds East, a distance of 102.57 feet to a 5/8-inch iron rod found for corner;

South 87 degrees, 27 minutes, 02 seconds East, a distance of 50.01 feet to a 1/2-inch iron rod found for corner;

North 02 degrees, 13 minutes, 56 seconds East, a distance of 453.58 feet to a 1/2-inch iron rod found for corner; said point being in the said south line of F.M. Highway No. 544:

THENCE, along the said south line of F.M. Highway No. 544, the following four (4) calls:

North 89 degrees, 42 minutes, 30 seconds East, a distance of 126.08 feet to a 1/2-inch iron rod with "Pacheco Koch" cap found for the beginning of a non-tangent curve to the right:

Easterly along said curve to the right, having a central angle of 02 degrees, 14 minutes, 00 seconds, a radius of 5,669.58 feet, a chord bearing and distance of South 89 degrees, 10 minutes, 32 seconds East, 220.98 feet, an arc distance of 220.99 feet to a "-" cut in concrete found for the end of said curve:

South 88 degrees, 03 minutes, 30 seconds East, a distance of 60.03 feet to a 1/2-inch iron rod with "Pacheco Koch" cap found for corner:

South 87 degrees, 59 minutes, 44 seconds East, a distance of 198.32 feet to the POINT OF BEGINNING:

CONTAINING, 361.555 square feet or 8.300 acres of land, more or less.

**Greenway-Wylie**

**Lot 6**

Lot 6, Block A of the Greenway Addition, an addition to the City of Wylie, Collin County, Texas, according to the Map thereof recorded in Volume O, Page 287, of the Map Records of Collin County, Texas.

**Lot 7**

Lot 7, Block A of the Greenway Addition, an addition to the City of Wylie, Collin County, Texas, according to the Map thereof recorded in Volume O, Page 287, of the Map Records of Collin County, Texas.

## **EXHIBIT "C"**

### **REMEDIATION COSTS DEFINED**

For purposes of this Agreement, Remediation Costs shall be defined as any task associated with environmental due diligence of the property including Phase I Environmental Site Assessments (ESAs) and Phase II investigations in accordance with applicable ASTM International (ASTM) standards (1527 and 1903, respectively), physical remediation activities, and/or regulatory closure to obtain Final Certificate of Completion from the Texas Commission on Environmental Quality's (TCEQ) Voluntary Cleanup Program (VCP). Site assessment activities, regulatory closure through the VCP, and remediation must be performed in accordance with TCEQ Texas Risk Reduction Program (TRRP) rules and regulations as outlined in Title 30 of the Texas Administration Code (TAC) Chapter 350. These tasks consist of, but are not limited to, preparation of an Affected Property Assessment Report (APAR), Site Investigation Work Plan, Response Action Plan (RAP), project management associated with TCEQ case coordinator, TCEQ review and application fees, Response Action Completion Report (RACR), and final site survey.

In addition to closure related costs through the TCEQ VCP, Remediation Costs shall include professional management of impacted solid waste materials before, during and after the development of the property (including, but not limited to, environmental, geotechnical, surveyor and engineering considerations) along with post-closure care of any remaining solid waste. In accordance with the VCP closure, all solid waste debris on the Site must be more than five feet below surface grade. All solid waste both during and after the construction remediation process must be removed and transported off-site or capped in place with either concrete or asphalt. Remediation Costs shall include OSHA safety requirements associated with remediation of the Greenway-Springs Property, air monitoring during construction and/or remediation, sampling and analysis of remaining solid waste materials, segregation, compaction, excavation, consolidation and capping, dewatering and proper handling/disposal of perched water, and all costs for off-Site transport and disposal fees of excavated materials. Post closure care will consist of periodic on-Site cap inspections and monitoring of on-Site groundwater monitoring wells. Remediation costs shall also include other reasonable consultants fees directly related to the remediation of the Greenway-Springs Property.

The City and WEDC, at their sole expense, shall employ a third-party which will review and assess all past and future expenses associated with remediating the Greenway-Springs Property. Said third-party will determine whether the expenses are reasonable and necessary to obtain a Final Certificate of Completion from the TCEQ Voluntary Cleanup Program for remediation of the Greenway-Springs Property and meet future requirements associated with post-closure Remediation Costs and care of any remaining solid waste. Should an expense be declared unnecessary or unreasonable, the Property Owners will be notified in writing. Should the Property Owners contest the findings of the third-party they will notify the City and WEDC of the contest within forty-five (45) days of the date the Property Owners were notified that the expenses were declared unnecessary or unreasonable, and a qualified entity agreed upon and employed by all parties, will be presented with the findings and all necessary documentation needed to make a determination as to the reasonableness and necessity of the expenditures in question, which all parties agree will be binding.





# Wylie City Council

## AGENDA REPORT

Meeting Date:	May 10, 2011	Item Number:	C.
Department:	City Manager		(City Secretary's Use Only)
Prepared By:	Mindy Manson	Account Code:	N/A
Date Prepared:	May 3, 2011	Budgeted Amount:	N/A
		Exhibits:	1

### Subject

Consider, and act upon, authorizing the City Manager to enter into a Compromise Settlement Agreement and Release between the City of Wylie and ARCHITEXAS, effective May 2, 2011; ratifying all actions taken by the City Manager to effectuate the settlement.

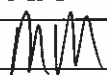
### Recommendation

Motion to authorize the City Manager to enter into a Compromise Settlement Agreement and Release between the City of Wylie and ARCHITEXAS, effective May 2, 2011; ratifying all actions taken by the City Manager to effectuate the settlement.

### Discussion

The City entered into discussions with the architects of the Municipal Complex regarding a significant Change Order that was necessary to address issues related to the type of sheathing installed on the project. The total cost of the remediation was \$247,759.00, \$97,759 of which was allocated from Thomas S. Byrne's contingency fund with the remainder coming from the City's contingency fund. The architects agreed to reimburse the City the entire amount per the attached agreement. The City received the check on May 3, 2011.

### Approved By

	Initial	Date
Department Director	MM	05-03-2011
City Manager		5/5/11

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## COMPROMISE SETTLEMENT AGREEMENT AND RELEASE

---

This Compromise Settlement Agreement and Release (hereinafter referred to as "Release") is hereby entered into by and between the City of Wylie, Texas ("City"), acting by and through Mindy Manson, and ARCHITEXAS - Architecture, Planning, and Historic Preservation, Inc. ("Architexas"), acting by and through Craig Mehl. The foregoing entities will be hereinafter referred to as "Party" or "Parties."

### WITNESSETH:

WHEREAS, the City contracted with ARCHITEXAS for it to provide professional architectural services for a project that has become known as the Wylie Civic Center a/k/a Wylie Municipal Complex ("Project");

WHEREAS, the City contracted with Thomas S. Byrne, Ltd. ("Byrne") to serve as the Construction Manager on the Project;

WHEREAS, beginning in approximately April of 2010, issues arose regarding the type of sheathing installed or scheduled to be installed in the Project ("Issues");

WHEREAS, to address the Issues, the City signed Change Order # 18 expanding the GMP by \$150,000 and zero additional days added to contract between City and Byrne, and, furthermore, the City authorized Byrne to incur additional expenditures of \$97,759.00 to be allocated from Byrne's CM contingency, for a total of \$247,759.00 as detailed in Byrne PC 149 Rev 2, understanding the above mentioned PC 149 Rev. 2 total of \$247,759.00 is the total and final amount to be spent on remediation of the "Issues;" and

WHEREAS, the parties hereto desire to settle their differences, fully, finally and completely disposing of all matters in controversy that relate to or arise out of the Issues or the work outlined in Byrne PC 149 Rev 2.

THEREFORE, in consideration of the recitals set forth herein, the promises and covenants set forth in this Release, and for such other good and valuable consideration, the receipt and



sufficiency of which is hereby acknowledged, each of the Parties to this Release and their respective predecessors, successors, assigns, heirs, executors, consultants, Board members, administrators, licensed architects, registered engineers and legal representatives agree and shall be bound by the following:

1. Upon execution of this Agreement, ARCHITEXAS shall pay to City the sum of \$247,759.00.
2. As a condition precedent to this settlement, Byrne must acknowledge in writing substantially in the form of Exhibit "A" that there is no cost to Byrne PC 149 Rev 2 in addition to the stated cost of \$247,759 (with no additional days added to its contract with the City) and that it releases any claim that it may have relating to or arising out of Byrne PC 149 Rev. 2 against ARCHITEXAS and its consultants, subcontractors, predecessors, successors, assigns, heirs, Board members, executors, consultants, administrators, licensed architects (Including but not limited to Holzman Moss Bottino Architecture and its partners and employees), registered engineers, attorneys, insurers, sureties, lenders and legal representatives.
3. In exchange for a payment made by or on behalf of ARCHITEXAS to the City in the amount of \$247,759.00, the City releases and forever discharges ARCHITEXAS and its consultants, subcontractors, predecessors, successors, assigns, heirs, Board members, executors, consultants, administrators, licensed architects (Including but not limited to Holzman Moss Bottino Architecture and its partners and employees, and its consultant, Construction Specification, Inc. and its owners and employees), registered engineers, attorneys, insurers, sureties, lenders and legal representatives from any and all claims that have been made, or which could be made in the future arising from the Issues and the work described in Byrne PC 149 Rev 2; provided, however, this Release does not affect ARCHITEXAS' obligations not related to Byrne PC 149 Rev 2 to the City at law or through its contract with the City which is entitled AIA Document A201 - 1997 General Conditions of the Contract for Construction AIA Document B141 - 1997 Part 1 Standard Form of Agreement between Owner and Architect with Standard Form of Architect's Services AIA Document B141 - 1997 Part 2 Standard Form of Architect's Services: Design and Contract Administration. In addition, this Release does not release ARCHITEXAS from design defects contained in any redesign that forms the basis of Byrne PC 149 Rev 2.
4. Each Party to this Release hereto acknowledges that it has read and understood the effect of this release. Each Party to this Release states that it executes this Release of its own free will and accord, for the purposes and considerations set forth in this mutual release, and that the person executing this mutual release on behalf of each of the Parties has the authority and right to execute same on behalf of such party.

5. Each Party to this Release agrees to pay all of its own attorneys' fees and costs, expert witness fees, consulting fees and remediation costs arising from the Issues and Byrne PC 149 Rev 2.
6. All Parties to this Release warrant and agree that no claim released by this Release has been assigned or transferred, by contract, operation of law, or otherwise, to any person or entity not a party to this Release.
7. All monies paid or other consideration given herein is without admission of liability.
8. This Release is the entire agreement between the Parties and supersedes all prior and contemporaneous agreements, statements, and understandings. This Release may not be modified except in writing signed by a representative of all Parties to this Release.
9. The terms and conditions of this Release shall bind and shall inure to the benefit of all Parties to this Release and their respective beneficiaries, receivers, heirs, legal representatives, trustees, successors, assigns, directors, officers, agents, servants, consultants, employees, licensed architects, registered engineers and attorneys, and shall include and run in favor of all Parties and their respective heirs, legal representatives, successors and assigns, directors, officers, agents, servants, consultants, licensed architects, registered engineers, employees, and attorneys, past and forever.
10. This Release may be executed in one or more counterparts, each of which shall be an original, and this Release is effective upon execution of at least one counterpart by each Party to this Release. Facsimile signatures shall have the same force and effect as original signatures.

IN WITNESS WHEREOF, an original and copies of this instrument have been executed on the dates shown and in the counties noted below. The City and ARCHITEXAS acknowledge that the person signing below on their behalf are expressly authorized to sign this Compromise Settlement Agreement and Release.

**ACKNOWLEDGED:**

**THE CITY OF WYLIE, TEXAS**

BY: Mindy Manson  
(SIGNATURE)

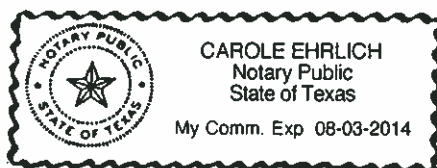
PRINTED NAME: Mindy Manson

TITLE: City Manager

STATE OF TEXAS     §  
                                 §  
COUNTY OF COLLIN §

BEFORE ME, the undersigned authority, a Notary Public, on this day personally appeared Mindy MANSON, a duly authorized representative of THE CITY OF WYLIE, TEXAS, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same for the purpose and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 2nd day of May, 2010.



Carole Ehrlich  
NOTARY PUBLIC IN AND FOR  
THE STATE OF TEXAS

ACKNOWLEDGED:

ARCHITEXAS - ARCHITECTURE, PLANNING, AND  
HISTORIC PRESERVATION, INC.

BY: 

(SIGNATURE)

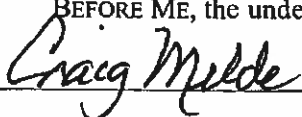
PRINTED NAME: CRAG MELDE

TITLE: CHAIRMAN, PRINCIPAL

STATE OF TEXAS

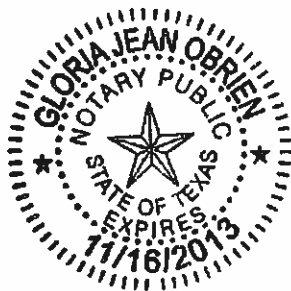
§  
§  
§

COUNTY OF DALLAS

BEFORE ME, the undersigned authority, a Notary Public, on this day personally appeared , a duly authorized representative of ARCHITEXAS - ARCHITECTURE, PLANNING, AND HISTORIC PRESERVATION, INC., known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same for the purpose and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 26<sup>th</sup> day of April, 2011

~~2010.~~



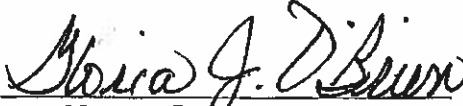
  
NOTARY PUBLIC IN AND FOR  
THE STATE OF TEXAS

Exhibit "A"

Thos. S. Byrne Ltd., the Construction Manager for the City of Wylie on the City of Wylie Municipal Complex ("Project") acknowledges that there is no additional charge or cost to Byrne PC 149 Rev. 2 in addition to the stated cost of \$247,759 and no additional time added to its contract for the Project with the City of Wylie. Further, as consideration for ARCHITEXAS - Architecture, Planning, and Historic Preservation, Inc. ("Architexas") reimbursing the City of Wylie for the cost of Byrne PC 149 Rev. 2, Byrne releases any claim that it may have relating to or arising out of Byrne PC 149 Rev. 2 against ARCHITEXAS and its consultants, subcontractors, predecessors, successors, assigns, heirs, Board members, executors, consultants, administrators, licensed architects (including but not limited to Holzman Moss Bottino Architecture and its partners and employees), registered engineers, attorneys, insurers, sureties, lenders and legal representatives.

Thos. S. Byrne Ltd.

By: \_\_\_\_\_

(SIGNATURE)

PRINTED NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

ARCHITEXAS agrees and acknowledges that it is familiar with the work performed by and or through Byrne pursuant to Byrne PC 149 Rev. 2 and has no knowledge of any of the work being improperly performed in compliance with all applicable code, specifications, and design requirements. ARCHITEXAS releases any and all claims that it may have against Byrne, its consultants, subcontractors, employees, officers, insurers and sureties relating to or arising out of PC 149 Rev. 2.

ARCHITEXAS - ARCHITECTURE, PLANNING, AND  
HISTORIC PRESERVATION, INC.

By: \_\_\_\_\_

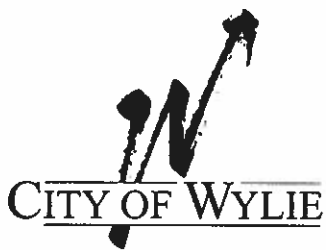
(SIGNATURE)

PRINTED NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_





# Wylie City Council

## AGENDA REPORT

Meeting Date: May 10, 2011  
Department: Planning  
Prepared By: Renae' Ollie  
Date Prepared: April 19, 2011

Item Number: 1.  
(City Secretary's Use Only)  
Account Code:  
Budgeted Amount:  
Exhibits: 1

### Subject

Hold a Public Hearing, and consider, and act upon, a Replat for Keller's First Addition, Lots 1R-1 & 2, Block 3, to combine 2 lots into a single lot for the development of a medical office and to create Lot 2 for future development.

### Recommendation

Motion to approve a Replat for Keller's First Addition, Lots 1R-1 & 2, Block 3, to combine 2 lots into a single lot for the development of a medical office and to create Lot 2 for future development.

### Discussion

The property totals 1.115 acres and would create one Commercial lot (Lot 1R-1, Block; 3) consisting of 0.494 acres and one commercial lot (Lot 2, Block 3) being 0.621 acres in size. Lot 1R-1 is situated in both the Commercial Corridor District and within the Downtown Historic District. The property was originally platted in the early sixties as Keller's First Addition and has undergone several replats since that time.

The current owner desires to build medical offices on separate lots with a common access drive.

A Site Plan for the subject property was approved by the Planning Commission on April 19, 2011.

The Replat complies with all applicable technical requirements of the City of Wylie.

Planning Commission voted 6-0 to recommend approval of the Replat.

### Approved By

Initial  
RO

Date  
04/26/11

Department Director

City Manager







## Wylie City Council

# AGENDA REPORT

Meeting Date:	<u>May 10, 2011</u>	Item Number:	<u>2.</u>
Department:	<u>Planning</u>		<u>(City Secretary's Use Only)</u>
Prepared By:	<u>Renae' Ollie</u>	Account Code:	<u></u>
Date Prepared:	<u>April 20, 2011</u>	Budgeted Amount:	<u></u>
		Exhibits:	<u>3</u>

### Subject

Hold a Public Hearing, and consider, and act upon, amending Zoning Ordinance 2005-58, Article 4, Section 4.3 Nonresidential Design Standards (F. Architectural Features); regarding exterior building materials.

**ZC2011-04**

### Recommendation

Motion to approve an amendment to Zoning Ordinance 2005-58, Article 4, Section 4.3 Nonresidential Design Standards (F. Architectural Features); regarding exterior building materials.

**ZC2011-04**

### Discussion

The current Zoning Ordinance requires brick as the primary exterior building material for nonresidential construction. The ordinance also requires at least 20 percent stone on the front façade.

*Primary materials for buildings in the NS, CR, CC, BG, LI & HI districts shall be constructed of brick with at least 20 percent stone on the front façade including, but not limited to brick, stone, cast stone, decorative concrete or stucco. Tilt wall construction is permissible in LI and HI districts.*

The ordinance calls for visual variety and/or architectural detailing and to utilize two complementary primary façade materials. Again, the only allowed primary material is brick. The proposed amendment would clearly define primary exterior materials for non-residential development as well as secondary materials. This amendment would allow for flexibility, while also achieving the required visual variety and ensuring durability of materials.

As defined by the Brick Industry Association:

**Brick** is a solid masonry unit of clay or shale, formed into a rectangular prism while burned or fired in a kiln.

**Masonry** is brick, stone, concrete, etc., or masonry combinations thereof, bonded with mortar.

**PROPOSED EXTERIOR MASONRY CONSTRUCTION REQUIREMENTS:**

All commercial buildings constructed on property zoned NS, CR, CC, BG, LI, and HI shall be masonry on all sides, exclusive of windows, doors, roofs, glass construction materials or sidewalk and walkway covers.

Masonry materials shall mean and include brick, stone, cast stone, decorative concrete block, stucco or concrete block. Concrete tilt wall is permissible in LI and HI districts.

EIFS, and/or cementitious fiberboard shall not be considered acceptable primary material but shall be accepted when applied as accent or architectural features and applied to not more than 20% of any facade.

*EIFS is a type of lightweight synthetic wall cladding system that provides exterior walls with an insulated finished surface and waterproofing in an integrated composite material system.*

*Cementitious Fiberboard (Hardie Board) is composite material made of cement, finely ground sand, natural fibers and water (typically 90% Portland cement and sand with a wood pattern).*

If adopted, these amendments shall not apply to the Downtown Historic District or the South Ballard overlay District.

In addition, an Appeals process will be established by this amendment. In the event an applicant desires alternative design and exterior material inconsistent with adopted standards the aggrieved person must submit in writing to the Planning Department, a request within 10 business days of the Director's decision. The request will then be forwarded to City Council in a reasonable time for consideration. The decision of the Council shall be final.

**Planning Commission Discussion**

The Commission discussed whether the technical requirements for applying stucco and EIFS (Exterior Insulation and Finish Systems) to exterior facades should be included in the ordinance. Staff informed the Commission that the application of materials are reviewed and approved by the Building Inspection Department and must adhere to certain building code standards including but not limited to Chapter 25 of the International Building Code prior to occupancy of a building.

Further discussion was to allow cementitious fiberboard (Hardie-board) as a primary exterior material. After some discussion, it was recommended that hardie-board not be acceptable as a primary material, but could be considered through an innovative Planned Development or through the appeals process if an applicant so desired. The reasoning was that this was not the desired look along major commercial corridors.

Notification for the proposed Text Amendment was posted in the local newspaper in accordance with State Law.

Commission voted 5-0-1 to recommend approval.

Approved By

Department Director

City Manager

Initial

RO

Date

04/26/11






FIGURE 4-9 ARCHITECTURAL DESIGN REQUIREMENTS			
PAGE #	ELEMENT	BASE STANDARD (ALL DEVELOPMENT MUST COMPLY FULLY WITH ALL LISTED BELOW)	DESIRABLE (EACH DEVELOPMENT MUST SELECT 3 OF THE 6 DESIRABLES LISTED BELOW)
65	<b>Building Materials</b>	<p>a. Buildings constructed of <del>brick</del> <u>masonry</u> with at least 20% stone on front facade in NS, CR, CC, BG, LI and HI Districts. Tilt wall construction is permissible in LI and HI districts.</p> <p>b. Roofs with pitch greater than 2:12 use specified roofing materials.</p> <p>c. Buildings should copy architectural styles and details, design themes, building materials, and colors of the surrounding new development context w/in 200 ft of a corner.</p>	<p>a. Use of two complementary primary facade materials to help achieve facade articulation, visual variety and/or architectural detailing.</p> <p>b. Copy same style entire block.</p>
66	<b>Building Articulation, Form and Massing</b>	<p>a. Walls not exceed height width ratio of 1 to 2 without variation in massing of facade. At least 25% of facade offset at least 4'.</p> <p>b. Entrances must be emphasized with architectural elements.</p> <p>c. Ground floor facades in NS, CR, &amp; CC Districts required specified features along 60% of length.</p>	<p>a. Application of base standards to facades not facing a public street.</p> <p>b. Use of Architectural detailing and/or materials to provide variety in visual appearance.</p>
68	<b>Architectural Compatibility</b>	<p>a. Buildings in the NS and CR Districts shall be architectural compatible with surrounding neighborhoods.</p> <p>b. Buildings in CC &amp; BG Districts adjacent or within 200' of residential areas shall be architecturally compatible.</p>	<p>a. Buildings with pitch roofs meeting minimum requirement of residential development.</p> <p>b. Buildings with hip roof sections, dormers or two or more gable roof sections at right angles to each other.</p>

**ARTICLE 4: NONRESIDENTIAL DISTRICT REGULATIONS**

**ARTICLE 4: NONRESIDENTIAL DISTRICT REGULATIONS**

**ARTICLE 4: NONRESIDENTIAL DISTRICT REGULATIONS**



## F. Architectural Features

Desired Architectural Design requirements are achieved by projects in accordance with the following criteria:

### 1. Building Materials

#### a. Base Standard

- (1) Primary materials for buildings in the NS, CR, CC, BG, LI and HI districts shall be constructed of ~~brick-a masonry product~~ with at least 20 percent stone on the front façade. Approved masonry materials including, but are not limited to brick, stone, cast stone, decorative concrete, concrete block or stucco. Tilt wall construction is permissible in LI and HI districts.
- (2) EFIS and/or Cementitious Fiberboard shall not be considered acceptable primary material but shall be accepted when applied as accent or architectural features and shall not exceed 20% of any façade face.
- (2)(3) Roofs with a pitch greater than 2:12 shall have roofing materials of architectural grade dimension asphalt shingles, concrete or clay roofing tiles, standing seam metal roofing, or slate roofing shingles.
- (3)(4) Facades, rooflines, and exterior treatment of structures shall be compatible in design, color and materials with surrounding new development within 200 feet of a corner.
- (5) Subject to Building Official & Planning Director evaluation of alternative exterior material's aesthetic appropriateness, durability and strength, an applicant may appeal alternative design and exterior material inconsistent with adopted standards to City Council.

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#### b. Desirable Design Attributes

- (1) To achieve façade articulation, visual variety and/or architectural detailing buildings shall use two complementary primary facade materials.
- (2) Provide the same style of building materials throughout the entire block.

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## OTHER CITY EXAMPLES

### **Allen, TX**

#### **Sec. 7.03.2. – Exterior Façade Materials.**

All main building exterior wall construction materials that are exposed shall be constructed of 100 percent masonry, including but not limited to stone, brick, tiles, concrete masonry units, cast concrete, concrete stucco, etc. Glazing and framed glazing are considered acceptable alternatives. Synthetic stucco (such as exterior finish and insulation system (EFIS)) may be utilized as an architectural accent material, not to exceed ten percent of the exterior surface of any building facade.

**Masonry** means construction composed of stone, brick, concrete, gypsum, hollow clay tile, concrete block or tile, glass block or similar building materials laid up unit by unit and set in mortar. Synthetic stucco (such as Exterior Finish and Insulation System (E.F.I.S) and cement fiber products are not considered as a masonry alternative on commercial structures.

### **City of College Station**

All exterior walls visible from the public right-of-way shall be finished with one or more of the following materials: brick, native stone, cast stone, textured concrete masonry units, fiber/cement board, solid wood planking, stucco, or synthetic stucco. Metal siding is prohibited on all exterior walls. There shall be no flat roofs.

Use of alternative materials may be approved by the Design Review Board, if such materials meet or exceed the standards herein.

### **Frisco, TX**

#### **9.09 EXTERIOR CONSTRUCTION OF MAIN BUILDINGS**

All exterior facades for a main building or structure in the 0-1, 0-2, NS, R, H, C-1 and C-2, IT, and CO Districts shall be constructed of one hundred percent (100%) masonry as defined herein in Section 42. Metal buildings are permitted in the I District upon review by the Planning & Zoning Commission and approval by the City Council

#### **11.02 EXTERIOR APPEARANCE OF BUILDINGS AND STRUCTURES**

A. Primary exterior materials shall conform to the requirements found in Article IV, Section 9.09. In addition to these requirements, the use of Exterior Insulated Finishing System (EIFS) is not permitted below nine (9) feet above finished grade, and the use of EIFS above nine (9) feet is limited to high impact EIFS.

B. Secondary materials used on the façade of a building are those that comprise less than 10% of an elevation area. Permitted secondary materials are all primary materials, aluminum or other metal, or other materials as approved by the Director of Planning or his/her designee.

**Masonry Construction** - Unless otherwise provided for in this Ordinance, exterior construction materials are fired brick, natural and manufactured stone, granite, marble, architectural concrete block, and stucco for all structures. Other exterior construction materials for non-residential structures are tilt wall concrete panels, sealed and painted concrete block, and exterior insulation and finish systems ("EIFS").

### **Jersey Village, TX**

**Masonry** means that form of construction composed of stone, brick, concrete, hollow clay tile, decorative concrete block or tile, glass block or other similar building units or materials or a combination of these materials laid up unit by unit and set in mortar. For the purposes of this definition, true stucco is considered **masonry**.

Regulations that apply to all districts: All walls shall be constructed of a solid unpierced **masonry** material with the surface facing the residential lots constructed of a common or face brick, decorative block or similar material that is compatible with the principle buildings in the adjacent residential areas. Similar material shall not include smooth face concrete **masonry** blocks or units. **Masonry** walls shall be erected on a concrete foundation of adequate strength and shall be not less than four inches wider than the wall to be erected.

### **City of Polk City, IA**

Buildings in C-1 District which are facing the City Square, the block on which the gazebo is centered, shall have a minimum of 75%, excluding glass, of the wall area facing the Square constructed of primary exterior material consisting of brick, architectural concrete panels, textured concrete block, or architectural steel or stone panels. Wall areas abutting the Square, but not facing it, shall consist of the abovementioned materials to the extent of 50% of the wall area, excluding the glass.

### **Morris, IL.**

#### **A. COMMERCIAL AND OFFICE DEVELOPMENT**

These standards are intended to ensure that commercial development responds and builds upon the strength and character of the neighborhood area. When the area is currently undeveloped, the design of the first commercial project in an undeveloped area shall establish a desirable character for the area.

1. One hundred percent (100%) of all exterior elevations shall be constructed of an approved form of masonry construction. Any exterior building façade shall incorporate a predominance of high quality materials that may include, but are not limited to, utility brick, sandstone, other native stone, or glass consistent with the following guidelines:

a. Brick, non-gray split faced block, sandstone, or other native stones shall at a minimum extend from ground level to the top of windows with minor variations allowed for accents.

b. Brick, non-gray split faced block, sandstone or other native stones shall also be the dominate masonry element of the remainder of facades facing a public street. Exterior Insulation and Finish Systems (EIFS) or synthetic stucco and gray split faced block may be used for accents.

c. Smooth gray concrete block is not permitted on any façade.

### **Menasha, WI.**

#### **Building Materials.**

- a. The following standards shall apply to buildings constructed after the effective date of this ordinance.
  1. The primary facade materials for all buildings shall be brick or natural stone. The Plan Commission may consider alternative facade materials that are durable and of high quality. Vinyl siding, aluminum siding, enameled steel, non-decorative concrete masonry units, and glass are prohibited as primary facade materials for any building elevation.
  2. Secondary facade materials may be used for architectural details or enhancements. Such materials shall be high quality, durable, and not cover more than twenty-five percent (25%) of the building facade. All secondary materials shall be approved by the Plan Commission.

### **Clive, IA**

In C-1 and C-2 districts, pre-cast tilt-up concrete panels are an acceptable exterior material provided that additional architectural detailing is provided along the public faces of the building.

In C-3, C-4, and C-6 districts, the architectural material selection shall be dominated with permanency and strength of materials in proportion to the aesthetic characteristics of the building's bulk and shape. Structures in these districts shall incorporate at a minimum, sixty percent (60%) brick, stone, or other similar substantial material into the overall building design. The percentage requirement shall be calculated on the total exterior surface area exclusive of glazed surfaces.

### **Eden Prairie, MN**

In Districts N-Com, C-Com, C-Reg, C-Reg-Ser, C-Hwy, Ofc, Pub, and RM2.5, seventy-five percent (75%) of the exterior building finish shall consist of materials comparable in grade and quality to the following: 1) face brick; 2) natural stone; 3) glass.

### **Centerville, OH**

Fiber Cement Siding as an optional siding material for new construction in the Architectural Preservation District (APD).





# Masonry Ordinance Case Study

## LEANDER, TEXAS

The city of Leander, Texas sits 22 miles northwest of Austin, Texas and is one of the fastest growing cities in Central Texas. In 2005, Leander approved a composite zoning ordinance designed to establish a framework of zoning guidelines and criteria that would provide for and support the development of a quality living and work environment.

By adopting the ordinance, the City Council sought to preserve and protect the attractiveness of the community and to provide reasonable regulations and requirements to protect, preserve, improve, and provide for the health, safety, and general welfare of the city.

### EXECUTIVE SUMMARY:

In 2005, the Leander City Council passed a new composite zoning ordinance to create standards for development within the city. By calling for the use of masonry products, Leander sought to improve the quality and appearance of the city's residential and commercial structures without slowing the city's double-digit growth. They also understood the tremendous added benefit of an expanded tax base as masonry buildings and homes typically appraise at higher values than like non-masonry structures. Oftentimes this scenario allows a city to actually lower its effective tax rate.

### JUST THE FACTS:

- City: Leander, Texas
- Population: 20,000
- Type of Government: Mayor and City Council
- Founded: July 17, 1882
- David H. Hutton, AICP Senior Planner for the City of Leander, 512-528-2732, david.hutton@ci.leander.tx.us
- Website: [www.ci.leander.tx.us/index.cfm](http://www.ci.leander.tx.us/index.cfm)

Leander offers residents a quality school system, affordable cost of living, progressive government, and close proximity to many employment options. As a result, the city's population skyrocketed from approximately 7,596 people in 2000 to more than 20,000 people in 2006, making it one of the fastest growing cities in Central Texas.

Naturally, a lot of new buildings and homes were constructed in the last few years. Since it was a safe bet that even more were to come, the City Council undertook measures in 2005 to ensure that future development improved the appearance, quality, and overall marketability of the city.

According to David Hutton, senior planner for the city of Leander, "Some residents were concerned that the city's zoning ordinance and development standards would not produce desired quality growth in the future. That is one reason why the city passed this comprehensive zoning ordinance that includes masonry requirements."

The 2005 composite zoning ordinance defines building standards for new developments according to use, site, and architectural

## Built To Last



*"Some residents were concerned that the city's zoning ordinance and development standards would not produce desired quality growth in the future. That is one reason why the city passed this comprehensive zoning ordinance that includes masonry requirements."*

*-Dave Hutton  
Senior Planner for the City of Leander*







## Masonry Ordinance Case Study

### BURLESON, TEXAS

Burleson, Texas is a growing suburb nestled 14 miles south of Fort Worth and 41 miles southwest of Dallas. Founded in 1881, the town's motto is *A City with Character*. In 2004, the city adopted a new masonry ordinance to continue quality construction that is built to last as demonstrated in its "Old Town" section, which is located in the heart of the city and features many 100-year-old brick buildings.

#### EXECUTIVE SUMMARY:

As Burleson, Texas experienced tremendous residential and business development, its city planners formulated a strategy to accommodate sustainable development. In doing so, the city sought to promote development and mandate the construction of new buildings with brick and other masonry materials. They also understood the tremendous added benefit of an expanded tax base as masonry buildings and homes appraise at higher values than like non-masonry structures. Oftentimes this scenario allows a city to actually lower its effective tax rate.

#### JUST THE FACTS:

- City: Burleson, Texas
- Population: 30,000
- Type of Government: Mayor and City Council
- Founded: 1881
- Allison J.H. Thompson, CECD, Economic Development Director; 817 447.5400 ext. 215; athompson@burlesontx.com
- Website: <http://www.burlesontx.com>

#### MASONRY REQUIREMENTS:

- Minimum 90% of exterior walls on residential buildings
- Minimum 75% of exterior walls on commercial buildings

In recent years, Burleson has experienced explosive growth. The population was only 20,976 in 2000, and now numbers well over 30,000. In recent years, many residents of Dallas and Fort Worth have moved to Burleson to enjoy its charm and easy commute to the major metropolitan areas.

But ironically, the people moving to Burleson to enjoy its charm were spurring the growth of buildings devoid of charm. Most notably, when developments were planned in the "Old Town" section, city leaders decided to develop a masonry ordinance to specify how they wanted their city to look — for many years to come — and still grow.

The Burleson Masonry Ordinance was first adopted in 2004, and was refined, readopted, and expanded citywide in 2006. With some exceptions, the ordinance calls for at least 90 percent of exterior walls on all primary residential buildings to be constructed of masonry materials. In non-residential zoning districts, the ordinance calls for at least 75 percent of exterior walls to be constructed of masonry materials. The changes in 2006 opened the door to allow more flexible features on brick homes, such as dormers and other elements, and to encourage even more creativity and quality when using brick products.

## Built To Last



"We're a high-growth community, and we want it to be quality growth. A masonry ordinance helps to do that. Brick lasts longer. So when you drive into a neighborhood, it's not full of paint peeling. Brick looks better longer and improves the look of the community."

-Allison Thompson  
Economic Development Director of Burleson





## You're building a legacy.

### Masonry Planning Case Study / Frisco, Texas



#### Focus on Sustainability Leads to Masonry Planning

Located in western Collin County about 35 minutes north of downtown Dallas, Frisco, Texas has, in the span of about 20 years, grown from a quiet small town of less than 6,200 people to a lively and attractive city of 109,000 in 2010. In 1997, Frisco had five schools. Thirteen years later, it has 53. The city master plan projects a population of 280,000 in an area of 70 square miles. It is the fastest growing city in the nation.

Frisco passed its masonry ordinance in April 1997 as one element in its long-term plan for sustainability. The ordinance, an amendment to the city's comprehensive zoning ordinance, specifies minimum percentages of masonry that are required for the exterior facades of new residential and commercial buildings. Now, more than 10 years later, the city continues to grow and stands out as one of the most desirable communities in North Central Texas.

#### City Snapshot:

- City: Frisco, Texas
- Population: 109,000 (2010)
- Government: Council-Manager
- Founded: 1902, first settled in the early 1800s
- Maher Maso, Mayor; George Purefoy, City Manager
- Web site: <http://www.friscotexas.gov>

*"We've looked at other cities and how they have aged, and we've adopted policies aimed at avoiding the problems older cities have experienced,"*

*– Maher Maso, Mayor Frisco, TX*

#### Masonry Requirements

##### Residential Zoning Districts

- Minimum of 75 to 100 percent masonry (facades) on the first floor. Cementitious fiber board may constitute up to 50 percent on the second floor. Brick is required on the second floor if part of the wall from the ground floor to the roofline is continuous.
- In Old Town area, all facades must be clay-fired brick or stone; cementitious siding is permitted in the Original Old Town Residential zoning district to reflect the primary building material (i.e. wood) used at the turn of the century.

For more information on how your community can increase its tax base, increase fire and wind safety, and attract quality commercial and residential development, call 800-733-1813 or visit [www.MasonryOrdinance.com](http://www.MasonryOrdinance.com)



# Wylie City Council

## AGENDA REPORT

Meeting Date: May 10, 2011 Item Number: 3.  
Department: City Secretary (City Secretary's Use Only)  
Prepared By: Account Code:  
Date Prepared: May 3, 2011 Budgeted Amount:  
Exhibits: Resolution No. 2006-17(R)

### Subject

Consider, and act upon, the appointment of a 2011 Board and Commissions City Council Interview Panel to conduct the May/June 2011 board applicant interviews.

### Recommendation

Motion to appoint \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_ to serve on the 2011 Boards and Commissions City Council Interview Panel.

### Discussion

Each year the City Secretary's Office solicits and compiles applications from Wylie residents wishing to serve on various Wylie Boards and Commissions. These applications are received through the year until the later part of May of each calendar year. Additionally, in May/June of each year, the applications are compiled into appointment timeframes to allow the three council member panel time to interview each applicant and subsequently choose a list of applicants to recommend to the full Council to serve two year terms on the various boards. The terms are staggered so each year approximately half of the members serving on each board and commission are appointed.

Pursuant to Resolution No. 2006-17(R) approved in 2006, the procedures for the interview process, allows council members, not serving on the panel, an opportunity to address questions and concerns to the panel to be asked of the applicants. The rules and procedures in Resolution 2006-17(R) comply with the Texas Open Meetings Act. The Resolution is attached for your review.

Proposed interview meeting dates will be Wednesday May 25, 2011, Thursday, May 26, 2011, and Wednesday, June 1, 2011 from 6:00 p.m. - 9:30 p.m. each night. Immediately following the final Wednesday night interviews, the panel will deliberate on recommendations to be submitted council at the June 14, 2011 regular meeting. This timeline for approval by June 14<sup>th</sup> will allow time for each member to be sworn in at the June 28<sup>th</sup> council meeting and begin their terms on July 1, 2011. All Council members will receive the scheduled appointment list and all applications submitted prior to the interview process.

### Approved By

Department Director

City Manager

Initial

CE

Date

5-3-11

5/5/11

**RESOLUTION NO. 2006-17(R)**

**A RESOLUTION OF THE CITY OF WYLIE, TEXAS ADOPTING  
PROCEDURES FOR THE WYLIE BOARDS AND COMMISSION  
INTERVIEW PROCESS AND THE APPOINTMENT OF THE  
2006-07 BOARDS AND COMMISSION INTERVIEW PANEL.**

**WHEREAS**, the City of Wylie has nine boards and commissions comprised of a total of 54 members serving staggered two year terms; and

**WHEREAS**, each year the City of Wylie receives applications from residents for consideration of appointment to City of Wylie Boards and Commissions; and

**WHEREAS**, applicants for the board and commission members are interviewed by a Selection Panel consisting of three council members; and

**WHEREAS**, it has been deemed that guidelines be set for the Selection Panel, the application process, the interview process, and the appointment process of the City of Wylie Boards and Commissions.

**NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WYLIE:**

SECTION 1: That the City Council of the City of Wylie will appoint a three (3) member Selection Panel each year comprised of three (3) Council Members.

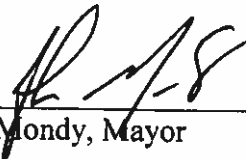
SECTION 2: That applications and scheduling of applicants to be interviewed by the Selection Panel will be completed by the City Secretary and provided to the City Council.

SECTION 3: That the interview process will be held in the City of Wylie Council Chambers and notifications of the interview dates will be posted for the public to attend.

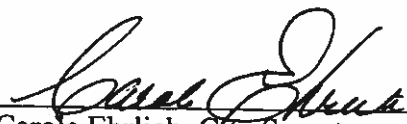
SECTION 4: That City Council can provide a series of questions to the Selection Panel for the applicants to address during their interview.

SECTION 5: Recommendations by the Selection Panel will be made in open session and the recommendations will be presented to Council for discussion and approval.

**DULY PASSED AND APPROVED** by the Wylie City Council on this 23<sup>rd</sup> day of May 2006.

  
\_\_\_\_\_  
John Mondy, Mayor

ATTEST:

  
\_\_\_\_\_  
Carole Ehrlich, City Secretary







# Wylie City Council

## AGENDA REPORT

**Meeting Date:** May 10, 2011  
**Department:** City Secretary  
**Prepared By:** \_\_\_\_\_  
**Date Prepared:** April 27, 2011

**Item Number:** 4.  
*(City Secretary's Use Only)*  
**Account Code:** \_\_\_\_\_  
**Budgeted Amount:** \_\_\_\_\_  
**Exhibits:** 1.

### Subject

Consider, and act upon, the appointment of a board member to the North Texas Municipal Water District Board to fill an expired term of June 1, 2011 to May 31, 2013.

### Recommendation

A motion to appoint \_\_\_\_\_ to the North Texas Municipal Water District Board of Directors for a term to begin June 1, 2011 and end May 31, 2013.

### Discussion

The Board of Directors of North Texas Municipal Water District is a policy making body similar in nature to the City Council. The Board is responsible to both the State of Texas and to the member cities for assuring that NTMWD operations occur in accordance with state and federal law, in alignment with NTMWD policy, and in the best interests of the cities receiving services. In accordance with the statute creating the District (Article 8280-141), the qualifications of a director include the following: "No person shall be appointed a Director unless he resides in the city from which he is appointed. No member of a governing body of a city and no employee of a city shall be appointed as a Director." Under other state law, no other government official that receives compensation could be appointed. NTMWD is requesting that by majority vote, the Wylie City Council reappoint Mr. Robert Thurmond, Jr. or appoint another Director to serve a term from June 1, 2011 to May 31, 2013.

NTMWD's existing Board (18 member cities) is comprised of individuals who have worked to represent their communities in other capacities and who have a solid understanding of municipal concerns to share with other Directors. Historically, Directors have dedicated from 10 to 30 years of service to the Board, thereby gaining experience and contributing the necessary leadership. This provides the maximum benefit in order to assure the city's needs are met in the most effective manner.

All NTMWD programs provide service based on cost to serve, with all cities provided equal treatment. Therefore, NTMWD policy established by the Board of Directors affects cost, performance and quality of service.

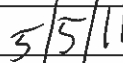
The City of Wylie has two board members on the NTMWD Board; Mr. Marvin Fuller whose term expires May

31, 2012 and Mr. Robert Thurmond Jr, whose term expires May 31, 2011. Mr. Thurmond stated that he would be willing to serve another term. The City Council will need to make this appointment before the term expires May 31, 2011.

**Approved By***Initial**Date*

CE

4/27/2011

**Department Director****City Manager**





**NORTH TEXAS MUNICIPAL  
WATER DISTRICT**

*Regional Service Through Unity*

March 9, 2011

Ms. Mindy Manson, City Manager  
City of Wylie  
300 Country Club Road  
Wylie, Texas 75098

RE: NTMWD BOARD MEMBER APPOINTMENT

Dear Ms. Manson:

This is your official notification that Mr. Bob Thurmond's term of office as an NTMWD Board Member expires May 31, 2011. The City Council, by a majority vote, should reappoint Mr. Thurmond or appoint another Director to serve a term from June 1, 2011, to May 31, 2013.

In accordance with the statute creating the District (Article 8280-141), the qualifications of a Director include the following: "No person shall be appointed a Director unless he resides in and owns taxable property in the city from which he is appointed. No member of a governing body of a city, and no employee of a city, shall be appointed as a Director." Under other state law, no other government official that receives compensation could be appointed.

The cities served by the NTMWD appreciate the work and effort expended by the appointed Directors. It is my practice to visit with new Directors in an orientation session prior to their first meeting; therefore, please notify my office in writing when the City Council has appointed a Director for the new term. Should you have any questions or need additional information, please do not hesitate to contact my office.

Sincerely,



JAMES M. PARKS  
Executive Director

JMP/mcf

cc: Mr. Bob Thurmond  
Ms. Carole Ehrlich, City Secretary





# Wylie City Council

## AGENDA REPORT

Meeting Date:	May 10, 2011	Item Number:	5.
Department:	Public Services		(City Secretary's Use Only)
Prepared By:	Mike Sferra	Account Code:	100-5411-58210
Date Prepared:	April 18, 2011	Budgeted Amount:	\$450,000
		Exhibits:	4

### Subject

Consider, and act upon, authorizing the City Manager to enter into a contract with Pavement Restoration Inc. in the amount of \$55,792.00 for asphalt surface maintenance on City streets.

### Recommendation

Motion to approve authorizing the City Manager to enter into a contract with Pavement Restoration Inc. in the amount of \$55,792.00 for asphalt surface maintenance on City streets.

### Discussion

The Street Division requested funds during the FY10-11 budget process as part of its annual asphalt street maintenance program. Due to budget constraints over the past several years, staff has been looking for a cost-effective and cost-efficient way to adequately maintain the City's existing asphalt streets.

As asphalt ages from exposure to the sun and elements, the asphalt oxidizes and becomes brittle and prone to cracking. Pavement Restoration, Inc. provides a service whereby they apply petroleum oils and resins to asphalt streets. This product penetrates into the existing asphalt to replenish the loss of original oils and resins. The result is that the asphalt is restored, becomes flexible instead of brittle, and the life of the streets are extended for another five to seven years. At that point, the process can be repeated again to further extend the life of the street even more.

This process is more cost effective than traditional milling and overlays. Sealant costs \$1.00/sq. yd. to apply versus traditional milling and overlay which costs \$7.00 to \$10.00/sq. yd. to install.

This product has been used by other cities and counties in Texas with good results. Staff has checked references at the City of Lubbock, City of Brownsville, and Travis County and found that these entities are very satisfied with the product and the contractor. They have multi-year contracts for the service and agree that it is a cost-effective measure over the traditional milling and overlay process.

They also cite that the contractor is very conscientious with regards to customer service toward residents. The contractor is responsible for notifying residents at least 24 hours in advance as well as performing all traffic control related to the project.

The contractor has provided a manufacturer's letter stating that they are the sole-source applicator in the State of Texas and that they have the necessary equipment and product familiarity to provide a successful application.

Approved By

*Initial*

*Date*

MS

4-18-2011

**Department Director**

**City Manager**



5/5/11

## **CONSTRUCTION AGREEMENT**

THE STATE OF TEXAS) )  
COUNTY OF COLLIN ) )

KNOW ALL MEN BY THESE  
PRESENTS:

### **ASPHALT REJUVENATION PROGRAM**

This construction agreement (the "Construction Agreement") is made by Pavement Restoration Inc., a Texas corporation (the "Contractor") and the City of Wylie, Texas, a Texas home rule municipal corporation (the "City"). In consideration of the promises specified in this Construction Agreement, the City and Contractor agree:

**The Work under this contract includes furnishing all labor, tools, material and equipment, and for performing all work necessary for Asphalt Rejuvenation Program.**

#### **Contract Documents and Order of Precedence**

The Contract Documents shall consist of the following documents:

1. this Construction Agreement;
2. properly authorized change orders;
3. the Standard Specifications for Asphalt Surface Maintenance with an Asphalt Rejuvenating Agent;
4. the City's Standard Construction Details of the City of Wylie, Texas;
5. the Public Works Construction Standards-North Central Texas (Latest edition) as published by the North Central Texas Council of Governments (the "Standard Specifications");
6. the City's written notice to proceed to Contractor; and
7. Letter indicating Sole Source Applicator for Reclamite Preservative Seal 2010

These Contract Documents are incorporated by reference into this Construction Agreement as if set out here in their entirety. The Contract Documents are intended to be complementary; what is called for by one document shall be as binding as if called for by all Contract Documents. It is specifically provided, however, that in the event of any inconsistency in the Contract Documents, the inconsistency shall be resolved by giving precedence to the Contract Documents in the order in which they are listed above.

#### **Total of Payments Due Contractor**

Construction Agreement  
#591207

For performance of the work in accordance with the Contract Documents, the City shall pay the Contractor in current funds as the Contract Price an amount equal to **Fifty-five Thousand, Seven Hundred Ninety-Two Dollars (\$55,792.00)**. A portion of the Contract Price is based upon unit pricing, at One Dollar (\$1.00) a square yard, and is subject to adjustment based upon actual measured units. The Contract Price is also subject to adjustment.

#### **Dates to Start and Complete Work**

Contractor shall begin upon execution of this Agreement by both parties ("Effective Date"). All work required under the Contract Documents shall be completed within one (1) year of the Effective Date, with two (2) one (1) year options to renew at the sole discretion of the City.

Under this Construction Agreement, all references to "day" are to be considered "calendar days" unless noted otherwise.

#### **CONTRACTOR'S INDEMNITY TO THE CITY AND OTHERS**

**CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, ITS COUNCIL MEMBERS, OFFICERS, EMPLOYEES, AND AGENTS FROM AND AGAINST ALL CITATIONS, CLAIMS, COSTS, DAMAGES, DEMANDS, EXPENSES, FINES, JUDGMENTS, LOSSES, PENALTIES OR SUITS, WHICH IN ANY WAY ARISE OUT OF, RELATE TO, OR RESULT FROM THE PERFORMANCE OF THE WORK OR WHICH ARE CAUSED BY THE INTENTIONAL ACTS OR NEGLIGENT ACTS OR OMISSIONS OF CONTRACTOR, ITS SUBCONTRACTORS, ANY OFFICERS, AGENTS OR EMPLOYEES OF EITHER CONTRACTOR OR ITS SUBCONTRACTORS, AND ANY OTHER THIRD PARTIES FOR WHOM OR WHICH CONTRACTOR IS LEGALLY RESPONSIBLE (THE "INDEMNIFIED ITEMS").**

**BY WAY OF EXAMPLE, THE INDEMNIFIED ITEMS MAY INCLUDE PERSONAL INJURY AND DEATH CLAIMS AND PROPERTY DAMAGE CLAIMS, INCLUDING THOSE FOR LOSS OF USE OF PROPERTY.**

**INDEMNIFIED ITEMS SHALL INCLUDE ATTORNEYS' FEES AND COSTS, COURT COSTS, AND SETTLEMENT COSTS. INDEMNIFIED ITEMS SHALL ALSO INCLUDE ANY EXPENSES, INCLUDING ATTORNEYS' FEES AND EXPENSES, INCURRED BY AN INDEMNIFIED INDIVIDUAL OR ENTITY IN ATTEMPTING TO ENFORCE THIS INDEMNITY.**

**IN ITS SOLE DISCRETION, THE CITY SHALL HAVE THE RIGHT TO APPROVE COUNSEL TO BE RETAINED BY CONTRACTOR IN FULFILLING ITS OBLIGATION TO DEFEND AND INDEMNIFY THE CITY. CONTRACTOR SHALL RETAIN APPROVED COUNSEL FOR THE CITY WITHIN SEVEN (7) BUSINESS DAYS AFTER RECEIVING WRITTEN NOTICE FROM THE CITY THAT IT IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS CONSTRUCTION AGREEMENT. IF CONTRACTOR DOES NOT RETAIN COUNSEL FOR THE CITY WITHIN THE REQUIRED TIME, THEN THE CITY SHALL HAVE THE RIGHT TO RETAIN COUNSEL AND THE CONTRACTOR SHALL PAY THESE ATTORNEYS' FEES AND EXPENSES.**

**THE CITY RETAINS THE RIGHT TO PROVIDE AND PAY FOR ANY OR ALL COSTS OF DEFENDING INDEMNIFIED ITEMS, BUT IT SHALL NOT BE REQUIRED TO DO SO.**

**THIS PARAGRAPH SHALL SURVIVE TERMINATION OF THIS AGREEMENT.**

**Insurance Requirements**

- A. Before commencing work, the Contractor shall, at its own expense, procure, pay for and maintain the following insurance written by companies approved by the state of Texas and acceptable to the City. The Contractor shall furnish to the City certificates of insurance executed by the insurer or its authorized agent stating coverage's, limits, expiration dates and compliance with all applicable required provisions.
1. Commercial General Liability insurance, including, but not limited to Premises/Operations, Personal & Advertising Injury, Products/Completed Operations, Independent Contractors and Contractual Liability, with minimum combined single limits of \$1,000,000 per-occurrence, \$1,000,000 Products/Completed Operations Aggregate and \$1,000,000 general aggregate. Coverage must be written on an occurrence form. The General Aggregate shall apply on a per project basis.
  2. Workers' Compensation insurance with statutory limits; and Employers' Liability coverage with minimum limits for bodily injury: a) by accident, \$100,000 each accident, b) by disease, \$100,000 per employee with a per policy aggregate of \$500,000.
  3. Business Automobile Liability insurance covering owned, hired and non-owned vehicles, with a minimum combined bodily injury and property damage limit of \$1,000,000 per occurrence.
  4. Umbrella or Excess Liability insurance with minimum limits of \$5,000,000 each occurrence and annual aggregate for bodily injury and property damage, that follows form and applies in excess of the above indicated primary coverage (1, 2 and 3). The total limits required may be satisfied by any combination of primary, excess or umbrella liability insurance provided all policies comply with all requirements. The contractor may maintain reasonable deductibles, subject to approval by the City.
  5. Builder's Risk Insurance is not required.
  6. Railroad Protective Liability Insurance is not required.
- B. With reference to the foregoing required insurance, the contractor shall endorse applicable insurance policies as follows:
1. A waiver of subrogation in favor of the City, its officials, employees, and officers shall be contained in the Workers' Compensation insurance policy.

2. The City, its officials, employees and officers shall be named as additional insureds on the Commercial General Liability policy, by using endorsement CG2026 or broader.
  3. All insurance policies shall be endorsed to the effect that the City will receive at least thirty (30) days notice prior to cancellation, non-renewal, termination, or material change of the policies.
- C. All insurance shall be purchased from an insurance company that meets a financial rating of B+VI or better as assigned by the A.M. BEST Company or equivalent.
- D. The Contractor agrees to comply with all applicable provisions of Texas Administrative Code Title 28, Section 110.110, building or construction contracts with governmental entities, the contractual requirements of which are incorporated by reference in this Construction Agreement. Under Section 110.110:
1. Certain language must be included in this Construction Agreement and in the Contractor's contracts with subcontractors and others relating to the work;
  2. the Contractor is required to submit to the City certificates of coverage for its employees and for all others providing services relating to the work until all project work is completed; and
  3. the Contractor is required to post certain notices at job sites.

#### **Performance and Payment Bonds**

The Contractor shall procure and pay for performance and payment bonds applicable to the work as prescribed by Texas Govt. Code, Chapter 2253, as amended. The performance and payments bonds shall be issued in the form. Among other things, these bonds shall apply to any work performed during the two-year warranty period after acceptance as described in this Construction Agreement.

The performance and payment bonds shall be issued by a corporate surety that is authorized to issue performance and payment bonds in Texas. Further, the Contractor shall supply capital and surplus information concerning the surety and reinsurance information concerning the performance and payment bonds upon City request.

#### **Progress Payments and Retainage**

As it completes portions of the work, the Contractor may request progress payments from the City. Progress payments shall be made by the City based on the City's estimate of the value of the work properly completed by the Contractor since the time the last progress payment was made. The "estimate of the value of the work properly completed" shall include the net invoice value of acceptable, non-perishable materials actually delivered to and currently at the job site only if the Contractor provides to the City satisfactory evidence that material suppliers have been paid for these materials.



No progress payment shall be due to the Contractor until the Contractor furnishes to the City:

1. copies of documents reasonably necessary to aid the City in preparing an estimate of the value of work properly completed;
2. full or partial releases of liens, including releases from subcontractors providing materials or delivery services relating to the work. Such releases shall be in a form acceptable to the City and shall release all liens or claims relating to goods and services provided up to the date of the most recent previous progress payment; and
3. any other documents required under the Contract Documents.

Progress payments shall not be made more frequently than once every thirty (30) calendar days unless the City determines that more frequent payments are appropriate. Further, progress payments are to be based on estimates and these estimates are subject to correction through the adjustment of subsequent progress payments and the final payment to Contractor. If the City determines after final payment that it has overpaid the Contractor, then Contractor agrees to pay to the City the overpayment amount specified by the City within thirty (30) calendar days after it receives written demand from the City.

The fact that the City makes a progress payment shall not be deemed to be an admission by the City concerning the quantity, quality or sufficiency of the Contractor's work. Progress payments shall not be deemed to be acceptance of the work nor shall a progress payment release the Contractor from any of its responsibilities under the Contract Documents.

After determining the amount of a progress payment to be made to the Contractor, the City shall withhold a percentage of the progress payment as retainage. The amount of retainage withheld from each progress payment shall be set depending upon the value of the contract work on the effective date of the contract:

<u>Contract Amount</u>	<u>Retainage Percentage</u>
Up to \$25,000	15%
\$25,000 to \$400,000	10%
Over \$400,000	5%

Retainage shall be withheld and may be paid to:

- a. ensure proper completion of the work. The City may use retained funds to pay replacement or substitute contractors to complete unfinished or defective work;
- b. ensure timely completion of the work. The City may use retained funds to pay liquidated damages; and

- c. provide an additional source of funds to pay claims for which the City is entitled to indemnification from Contractor under the Contract Documents.

Retained funds shall be held by the City in accounts that shall not bear interest. Retainage not otherwise withheld in accordance with the Contract Documents shall be returned to the Contractor as part of the final payment.

#### **Withholding Payments to Contractor**

The City may withhold payment of some or all of any progress or final payment that would otherwise be due if the City determines, in its discretion, that the work has not been performed in accordance with the Contract Documents. The City may use these funds to pay replacement or substitute contractors to complete unfinished or defective work.

The City may withhold payment of some or all of any progress or final payment that would otherwise be due if the City determines, in its discretion, that it is necessary and proper to provide an additional source of funds to pay claims for which the City is entitled to indemnification from Contractor under the Contract Documents.

Amounts withheld under this section shall be in addition to any retainage.

#### **Acceptance of the Work**

When the work is completed, the Contractor shall request that the City perform a final inspection. If the City determines that the work has been completed in accordance with the Contract Documents and so long as the City advises the City that it will accept the work, the City shall issue a written notice of acceptance of the work. If the City determines that the work has not been completed in accordance with the Contract Documents or if the City determines that the work does not comply with its requirements for public improvements, then it shall provide the Contractor with a verbal or written list of items to be completed before another final inspection shall be scheduled.

It is specifically provided that work shall be deemed accepted on the date specified in the City's written notice of acceptance of the work. The work shall not be deemed to be accepted based on "substantial completion" of the work, use or occupancy of the work, or for any reason other than the City's written notice of acceptance. Further, the issuance of a certificate of occupancy for all or any part of the work shall not constitute a notice of acceptance for that work.

In its discretion, the City may issue a notice of acceptance covering only a portion of the work. In this event, the notice shall state specifically what portion of the work is accepted.

#### **Erosion Control Measures**

The Contractor shall install and maintain erosion control measures in accordance with the Contract Documents and City ordinances.

#### **Final Payment**

After all work required under the Contract Documents has been completed, inspected, and accepted, the City shall calculate the final payment amount promptly after necessary measurements and computations are made. The final payment amount shall be calculated to:

1. include the estimate of the value of work properly completed since the date of the most recent previous progress payment;
2. correct prior progress payments; and
3. include retainage or other amounts previously withheld that are to be returned to Contractor, if any.

Final payment to the Contractor shall not be due until the Contractor provides full or partial releases of liens, or other evidence satisfactory to the City to show that all sums due for labor, services, and materials furnished for or used in connection with the work have been paid or shall be paid with the final payment. To ensure this result, Contractor consents to the issuance of the final payment in the form of joint checks made payable to Contractor and others. The City may, but is not obligated to issue final payment using joint checks.

Final payment to the Contractor shall not be due until the Contractor has supplied to the City copies of all documents that the City determines are reasonably necessary to ensure both that the final payment amount is properly calculated and that the City has satisfied its obligation to administer the Construction Agreement in accordance with applicable law.

Subject to the requirements of the Contract Documents, the City shall pay the Final Payment within thirty (30) calendar days after the date specified in the notice of acceptance. This provision shall apply only after all work called for by the Contract Documents has been accepted.

### **Contractor's Warranty**

Following completion of construction and acceptance of the work, the City intends to convey the improvements to the City. Contractor shall provide and pay for such bonds or other assurances required by the City for acceptance of the improvements, including but not limited to, all labor and materials that the City determines are necessary to correct all defects in the work arising because of defective materials or workmanship supplied or provided by Contractor or any subcontractor for a period of two years.

Any work performed by or for the Contractor to fulfill its warranty obligations shall be performed in accordance with the Contract Documents. By way of example only, this is to ensure that work performed during the warranty period is performed with required insurance and the performance and payment bonds still in effect.

Work performed during the two-year warranty period shall itself be subject to a one-year warranty. This warranty shall be the same as described in this section.

### **Notice**

Any notice required to be sent under this Agreement must be in writing and may be served by depositing same in the United States Mail, addressed to the party to be notified, postage pre-paid and registered or certified with return receipt requested, or by delivering the same in person to such party via a hand-delivery service, Federal Express or any courier service that provides a return receipt showing the date of actual delivery of same to the addressee thereof. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee. For purposes of notice, the addresses of the parties shall be as follows:

If to Wylie:                      City of Wylie  
   Attn: Mike Sferra  
   300 Country Club Drive  
   Wylie, Texas 75098

If to Contractor:              Pavement Restoration, Inc.  
   Attn: \_\_\_\_\_  
   Address: \_\_\_\_\_  
   \_\_\_\_\_  
   \_\_\_\_\_

#### **Compliance with Laws**

The Contractor shall be responsible for ensuring that it and any subcontractors performing any portion of the work required under the Contract Documents comply with all applicable federal, state, county, and municipal laws, regulations, and rules that relate in any way to the performance and completion of the work. This provision applies whether or not a legal requirement is described or referred to in the Contract Documents.

#### **Other Items**

The Contractor shall sign the Construction Agreement, and deliver signed performance and payment bonds and proper insurance policy endorsements (and/or other evidence of coverage) within ten (10) calendar days after the City makes available to the Contractor copies of the Contract Documents for signature. Four (4) copies of the Contract Documents shall be signed by an authorized representative of the Contractor and returned to the City.

The individuals executing this Agreement on behalf of the respective parties below represent to each and to others that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.

Contractor and City agree that Contractor shall perform the duties under this Agreement as an independent contractor.

Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had an opportunity to confer with its counsel.

This Agreement embodies the entire Agreement between the parties and may only be modified in a writing executed by both parties.

This Agreement shall be binding upon the parties hereto, their successors, heirs, personal representatives and assigns. Neither party will assign or transfer an interest in this Agreement without the written consent of the other party.

It is expressly understood and agreed that, in the execution of this Agreement, the City has not waived, nor shall be deemed hereby to have waived any immunity or defense that would otherwise be available to it against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the parties do not create any obligations, express or implied, other than those set forth herein, and this Agreement shall not create any rights in parties not signatories hereto.

The Contract Documents shall be construed and interpreted by applying Texas law. Venue for any litigation concerning the Contract Documents shall be proper in Collin County, Texas.

Although the Construction Agreement has been drafted by the City, should any portion of the Construction Agreement be disputed, the City and Contractor agree that it shall not be construed more favorably for either party.

The Contract Documents are binding upon the City and Contractor and shall insure to their benefit and as well as that of their respective successors and assigns.

[Signature Page Follows]

Pavement Restoration, Inc.

City of Wylie, Texas

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Address:

Address: 300 Country Club Drive  
Wylie, Texas 75098

Phone: \_\_\_\_\_

Phone:

Fax: \_\_\_\_\_

Fax:

ATTEST:

\_\_\_\_\_



# PAVEMENT RESTORATION.*Inc*

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**CITY OF WYLIE  
ATT: JOEL**

**3/18/2011**

**FORMAL ESTIMATE**

-----  
**REF: - RECLAMITE REJUVENATOR APPLICATION  
PROJECTED START DATE:MID YEAR**

**Completed Turn – key APPLICATION @ \$ 1.00 per sq yard**

**VALID180 DAYS FROM DATE HEREOF**

**APPROX 55 792 SQ YARDS IDENTIFIED FOR PILOT – as per road schedule supplied**

**Inclusive : Mobilisation**

**Street assessment**

**Resident Notification**

**Traffic control**

**Reclamite**

**Product application**

**Sanding ( WASHED CONCRETE SAND )**

**Sweeping up of residue sand next day**

**Before / After street core samples to Independent Lab Analysis**

**Projected cost \$ 55 792.00**

**SIGNED: Rob Wiggins  
President**

**Pavement Restoration Inc**

*Post Office Box 1532 . Boerne , Texas 78006 . Tel: 813.323.2710 Fax: 830.336.3484  
EMAIL: [paverestore@msn.com](mailto:paverestore@msn.com) WEB: [www.paverestore.com](http://www.paverestore.com)*

## PAVEMENT RESTORATION

### **Various Streets**

<u>Eubanks</u> between Hwy 78 & Stone Rd.	21' x 2225' 5192 sq yd
<u>Jackson</u> between Brown & Hwy 78	45' x 1820' 9100 sq yd
<u>Butler</u> between Ballard & Butler Cir.	29' x 1900' 6122 sq yd
<u>Pirate</u> between Ballard & Hilltop	30' x 1560' 5200 sq yd

---

### **Caldwell Estates Subdivision**

<u>Duncan Way</u>	26' x 1130' 3264 sq yd
<u>S. 2<sup>nd</sup>.</u> between Stone & Pirate	25' x 450' 1100 sq yd
<u>S. Hilltop</u> between Stone & Pirate	25' x 600' 1667 sq yd

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### **Bostic Subdivision**

<u>3<sup>rd</sup>. St.</u> between Butler & Park	28' x 1265' 3936 sq yd
<u>4<sup>th</sup>. St.</u> between Butler & Park	27' x 1270' 3810 sq yd
<u>Hilltop</u> between Butler & Stone	25' x 1860' 5167 sq yd

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### **Holiday Terrace**

<u>Mardi Gras</u>	22' x 1240' 3031 sq yd
<u>Memorial</u>	22' x 1210' 2958 sq yd
<u>Easter</u>	25' x 750' 1833 sq yd
<u>Valentine</u>	22' x 1396' 3412 sq yd

55 792 sq yds

total





■ 1134 Manor Street, Oildale, California 93308  
■ P.O. Box 5877, Bakersfield, California 93388  
■ Phone: 661.393.7110  
■ Fax: 661.393.2083

FEBRUARY 12, 2010

ATT: TO WHOM IT MAY CONCERN  
STATE OF TEXAS

RE: Sole Source Applicator for Reclamite Preservative Seal 2010

Pavement Restoration, Inc.  
P.O. Box 1532  
Boerne, Texas 78006

This letter is to advise that Tricor Refining, LLC has appointed Pavement Restoration Inc., Boerne, Texas to market and apply Reclamite® Preservative Seal as the sole source applicator in the State of Texas as of Jan 2006. Pavement Restoration, Inc. has the necessary equipment and product familiarity to provide a successful application.

Tricor Refining, LLC – Reclamite® Preservative Seal is the only maltene based asphalt rejuvenator marketed nationally with a 30 year history of product use. Reclamite has been proven in various testing by state, county and government agencies to decrease viscosity and increase penetration value of the asphalt. Reclamite® data is presently being updated based on the test sections placed in the United States as part of the National Sealer Binder Study sponsored by the FP<sup>2</sup> and the National Center for Pavement Preservation. Reclamite is the only maltene based rejuvenator taking part in this study.

Please feel free to contact me if you have any questions regarding the use of Reclamite®

Yours truly,  
*Jim Brownridge*

Marketing Manager  
Tricor Refining, LLC  
Producers of Golden Bear Preservation Products  
Phone: 661.393.7110 extension 107  
Cellular: 661.337.9979





# Wylie City Council

## AGENDA REPORT

**Meeting Date:** April 26, 2011  
**Department:** Engineering  
**Prepared By:** Chris Holsted  
**Date Prepared:** April 18, 2011

**Item Number:** 6.  
*(City Secretary's Use Only)*  
**Account Code:** \_\_\_\_\_  
**Budgeted Amount:** \_\_\_\_\_  
**Exhibits:** Agreement

### Subject

Consider, and act upon, authorizing the City Manager to execute an agreement with U.S. Right of Way in an amount of \$85,200 for right-of-way acquisition services for the Stone Road Phase II paving project.

### Recommendation

Motion to authorize the City Manager to execute an agreement with U.S. Right of Way in an amount of \$85,200 for right-of-way acquisition services for the Stone Road Phase II paving project.


### Discussion

The 2005 City of Wylie Bond Program included \$10,400,000 for the design and construction of Stone Road from Ballard Avenue to County Line Road. The 2007 Collin County Roadway Bond Program included \$5,021,250 for the design and construction of Stone Road from Akin Lane to County Line Road. The first phase of Stone Road from Ballard Ave. to Akin Lane was completed in 2008 at a construction cost of \$3,277,936.17.

The Stone Road Phase II project includes approximately 2,800 linear feet of a 4-lane paving section from Akin Lane to W.A. Allen Blvd and approximately 1,900 linear feet of paving of FM 544 south of Stone Road to Collins Blvd. 1,300 linear feet of off-site drainage is also included in the project. The construction plans are 90% complete and the projected construction cost for the project is \$4.7 million.

Twenty one parcels have been identified for acquisition for the project. An appraisal for each parcel has been included in the proposal; however, some parcels may be acquired without an appraisal thereby reducing the acquisition cost. Acquisition services total \$85,200 including \$35,000 for appraisals.

### Approved By

	<i>Initial</i>	<i>Date</i>
<b>Department Director</b>	CH	04/18/11
<b>City Manager</b>		5/5/11

**AGREEMENT BETWEEN  
CITY OF WYLIE, TEXAS and  
U.S. RIGHT OF WAY**

**THIS AGREEMENT** is made this \_\_\_\_ day of May, 2011, by and between the City of Wylie, Texas (hereafter referred to as "City") and U.S. Right of Way Company (hereafter referred to as "U.S. ROW").

**WHEREAS**, City requires certain right-of-way acquisition services related to the Stone Road Project as more fully described in the Project Description section set forth on Exhibit A attached hereto and incorporated herein for all purposes (hereinafter collectively called the "Project"); and

**WHEREAS**, City desires to engage U.S. ROW to provide and perform said services in connection with the Project, and U.S. ROW desires to provide and perform said services, all on the terms and conditions set forth in this Agreement.

**NOW, THEREFORE**, in consideration of the foregoing and their mutual covenants hereinafter set forth, City and U.S. ROW agree as follows:

**SECTION 1  
PROJECT SERVICES OF U.S. ROW**

**Section 1.1 Project Services.** In connection with the Project, U.S. ROW shall provide for City right-of-way acquisition services, which include file set up, initial title search, initial letter along with landowner's bill of rights, negotiations for offer and one counter offer for acquisition, final offer letters as needed along with second distribution of landowner's bill of rights, initial appraisals, appraisals as needed and support for condemnation through commissioners hearing, and perform, furnish or obtain from others the work and services expressly described, referred to or limited herein (collectively the "Project Services"). U.S. ROW shall provide the Project Services for City in all phases of the Project to which this Agreement applies, all as more particularly set forth in Exhibit "A".

**SECTION 2  
ADDITIONAL SERVICES OF U.S. ROW**

**Section 2.1. Additional Services.** In connection with the Project, U.S. ROW may be called on to perform, provide, furnish or obtain from others services or work which are not part of, or are in addition to, the Project Services ("Additional Services"). If authorized in writing by City and agreed to by U.S. ROW, U.S. ROW shall perform, provide, furnish or obtain from others the agreed upon Additional Services. U.S. ROW shall not be obligated to perform, provide, furnish or obtain any Additional Services without the prior written authorization of City.

## **Section 2.2 Changes in the Project Services.**

**Section 2.2.1 Agreed Upon Changes in the Project Services.** It is the desire of the parties to keep changes in the Project Services at a minimum, but the parties recognize that such changes may become necessary and agree that City may initiate deletions, modifications or changes to the Services by advising U.S. ROW in writing of the change believed to be necessary. As soon thereafter as practicable, U.S. ROW shall prepare a cost estimate of the change and shall inform City of the adjustment in the compensation due U.S. ROW under Section 5 hereof ("U.S. ROW' Compensation") and/or the Completion Date set forth in Section 4 hereof, if any, applicable to such requested change. City shall then advise U.S. ROW in writing of its approval or disapproval of the change. If City approves the change, a written contract amendment shall be executed by both parties and U.S. ROW shall perform the Services as changed and the adjustment in U.S. ROW's Compensation and/or the Completion Date set forth in the executed contract amendment shall become effective. U.S. ROW may initiate changes in the Services by advising City in writing that in its opinion a change is necessary. If City approves, it shall so advise U.S. ROW and, thereafter, the change shall be handled as if initiated by City. If a change is not approved, or if a written contract amendment is not executed, by both City and U.S. ROW, the change shall not become effective and U.S. ROW shall not be obligated to perform the change.

## **SECTION 3 CITY'S RESPONSIBILITIES**

City shall do the following in a timely manner so as not to delay the performance of the Services by U.S. ROW:

**Section 3.1 City Representative.** Designate a person to act as City's representative with respect to the Services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret, and define City's policies and decisions with respect to U.S. ROW's Services for the Project.

**Section 3.2 Project Information.** Provide all criteria, all available information pertinent to the Project, and full information as to City's requirements for the Project. City agrees that U.S. ROW shall be entitled to rely upon the accuracy and completeness of all such information.

**Section 3.3 Project Access.** Arrange for access to and make all provisions for U.S. ROW to enter upon public and private property as required for U.S. ROW to perform services under this Agreement. All such access shall be provided without condition or restriction unacceptable to U.S. ROW nor shall U.S. ROW be required to indemnify or insure any third party as a condition to such access.

**Section 3.4 City Participation.** Examine all reports and other documents presented by U.S. ROW, obtain advice of an attorney, insurance counselor and other consultant as City deems appropriate for such examination and render in writing decisions or instructions pertaining thereto within a reasonable time so as not to delay the services of U.S. ROW.

**Section 3.5 Notices.** Give prompt written notice to U.S. ROW whenever City observes or otherwise becomes aware of any development that affects the scope or timing of U.S. ROWs' Project Services, or any defect or non-conformance in the Project Services by U.S. ROW (or its independent professional associates or consultants) or in the work of any contractor or other party performing or providing work or services in connection with the Project.

**Section 3.6 Additional Services.** When City deems it necessary or appropriate for Additional Services to be performed in connection with any phase of the Project, City shall furnish or direct U.S. ROW to provide Additional Services as stipulated in Section 2 of this Agreement.

**Section 3.7 Licenses, Permits, etc.** Provide U.S. ROW with any necessary governmental permits and licenses required to be taken out in the name of City which are necessary for the performance of the Services and, except where such permits, processes or licenses are by the terms of Exhibit A the responsibility of U.S. ROW, obtain any permits, processes and other licenses which are required for the Project or the Services, if any.

**Section 3.8 Other Duties.** Perform any other duties, obligations or responsibilities of the City set forth elsewhere in this Agreement, including, but not limited to, the obligation to make the payments called for under Section 5 hereof.

## **SECTION 4 PERIODS OF SERVICE, COMPLETION DATE, FORCE MAJEURE**

**Section 4.1 Period of Service.** The provisions of this Section 4 and the various rates of compensation for U.S. ROW's services provided for elsewhere in this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Project. U.S. ROW's obligation to render Project Services hereunder will extend for a period which may reasonably be required for the Project including any Additional Services, extra or changed work and required extensions thereto.

**Section 4.2 Completion Date.** *U.S. ROW agrees to complete the Project Services by 11-2-2011 (the "Completion Date").* If the Completion Date is exceeded, through no fault of U.S. ROW as solely determined by the City, all rates, measures and compensation provided herein shall be subject to equitable adjustment. The Completion Date (and U.S. ROW's obligation to complete the Project Services by such date) is subject to reasonable requests for extensions in writing to the City for the performance of Additional Services, Constructive Changes or other extra work, or in response to a Force Majeure Event as provided below.

**Section 4.3 Timeliness of Performance.** The City and U.S. ROW are aware that many factors outside U.S. ROW's control may affect U.S. ROW's ability to complete the services to be provided under this Agreement. U.S. ROW will perform these services with reasonable diligence and expediency consistent with sound practices. In the event performance extends one hundred eighty (180) days beyond the Completion Date, City has the right to terminate this Agreement.

**Section 4.4 Notice of Delay.** If U.S. ROW becomes aware of delays due to any cause beyond the reasonable control of U.S. ROW, which will result in the schedule for performance of U.S. ROW's services not being met, U.S. ROW shall promptly notify the City. If the City becomes aware of any delays or other causes that will affect U.S. ROW's schedule, the City shall promptly notify U.S. ROW. In either event, U.S. ROW's schedule for performance of its services shall be equitably adjusted.

**Section 4.5 Force Majeure.** For purposes hereof, a "Force Majeure Event" shall mean the occurrence of a failure or delay due to circumstances beyond City's or U.S. ROW's control including, without limitation, lack of necessary access to property, acts of God, acts of a public enemy, fires, floods, earthquakes, wars, civil disturbances, sabotage, accidents, insurrection, blockages, embargoes, storms, explosions, catastrophes, epidemics, damage to the Project, lack of access to Project, unavailable utilities and power, water, labor disputes, City's or U.S. ROW's failure to timely perform its obligations under this Agreement or other causes beyond City's or U.S. ROW's control.

## **SECTION 5 U.S. ROW's COMPENSATION**

### **Section 5.1 Compensation for Services and Expenses of U.S. ROW in connection with Project Services**

**Section 5.1.1 For Project Services.** As compensation for the performance of the Project Services rendered by U.S. ROW under Section 1, City shall pay U.S. ROW, in accordance with these provisions:

As compensation for the performance of the above described Services, U.S. ROW will be reimbursed by City of Wylie by payment of a note as follows.

#### **Appraisal and Acquisition for Right of Way**

<b>U.S. ROW Fees:</b>	<b>\$50,200.00</b>
<b>Appraisal Fees:</b>	<b><u>\$35,000.00</u></b>
<b>Total Fees for Services:</b>	<b>\$85,200.00</b>

#### **U.S. ROW**

<b>Parcels 1, 5-14 (includes E1 and E7), E2-E6</b>	
File Set up & Initial Offer	\$1,000.00
Offer	\$1,200.00
Closing or Final Offer	\$500.00
File Turned to City	\$250.00
<b>TOTAL</b>	<b>\$2,950.00/parcel</b>

<b>Parcels 2, 3 and 4</b>	
All Services Billed at Time of File Set Up	\$1,000.00/parcel

**Per Parcel Additional Services if needed:**

Coordinating condemnation hearings	\$1,500.00
Per Hour Cost for Additional Services not Listed	\$85.00
Appraisal and Testimony Services for Condemnation	At Cost

In the event the Scope of Work, as attached, is expanded or reduced from the total number of parcels or the City of Wylie requests extra work to be performed in addition to that defined in the attached Scope of Work, the expanded or extra work will be paid for as Additional Services.

**APPRAISAL**

Parcel No.	Acquisition Interest	Take	Property Type	Fee	Remarks
1	Fee Simple	Partial	Single-family house	\$2,000.00	Small corner clip; vacant, foreclosure; appraise as improved
2	Fee Simple	Partial	Single-family house	\$1,500.00	Small corner clip; appraise as improved
3	Fee Simple	Partial	Single-family house	\$1,500.00	Small corner clip; appraise as improved
4	Fee Simple	Partial	Single-family house	\$1,500.00	Small corner clip; appraise as improved
5 & E1	Fee Simple & Perm. Easement	Partial	Single-family house on small acreage	\$3,000.00	Prescriptive ROW; proximity to house
6	Fee Simple	Partial	Single-family house	\$1,500.00	NW/c Stone/W.A. Allen; appraise as improved
7	Fee Simple	Partial	Single-family house on small acreage	\$3,000.00	Prescriptive ROW; proximity to pond
8	Fee Simple	Partial	Mobile home park	\$3,500.00	Prescriptive ROW; proximity to site improvements; appraise land & affected site improvements only
9	Fee Simple	Partial	Single-family house	\$1,500.00	Prescriptive ROW; appraise as improved
10	Fee Simple	Partial	Single-family house	\$1,500.00	Prescriptive ROW;



					appraise as improved
11	Fee Simple	Partial	Single-family house	\$1,500.00	Prescriptive ROW; appraise as improved
12	Fee Simple	Partial	Single-family house	\$1,500.00	Prescriptive ROW; appraise as improved
13	Fee Simple	Partial	Single-family house	\$1,500.00	Prescriptive ROW; appraise as improved
14 & E7	Fee Simple & Perm. Easement	Partial	Single-family house	\$2,000.00	Proximity to berm; custom fence; appraise as improved
E2	Fee Simple	Partial	Single-family house	\$1,500.00	Appraise as improved
E3	Fee Simple	Partial	Single-family house	\$1,500.00	Appraise as improved
E4	Fee Simple	Partial	Single-family house	\$1,500.00	Appraise as improved
E5	Fee Simple	Partial	Single-family house	\$1,500.00	Appraise as improved
E6	Fee Simple	Partial	Single-family house & vacant lot	\$2,000.00	Appraise as improved

**APPRAISAL ONLY:** A number of parcels appear to involve existing prescriptive right-of-way. Some of the properties are located within the municipal limits of the City and some appear situated inside Collin County boundaries only. In some cases costs-to-cure may be necessary for site improvements involved in the proposed acquisitions. This estimate is based on preliminary drawings and data, and limited field observations, and public records. U.S. ROW shall receive prior written consent from the City before incurring additional costs-to-cure in the proposed acquisitions.

## **Section 5.2 Other Provisions Concerning Payments.**

**Section 5.2.1 Generally.** The City will be billed per parcel every thirty (30) days by the first (1<sup>st</sup>) of the month. All parcel payments, title insurance and closing fees required by the title company to be paid at closing by the City will be requested by U.S. ROW and paid directly by the City.

**Section 5.2.2 Payments after Termination by City.** In the event of termination by City under paragraph 6.1 upon the completion of any phase of the Project Services, payments due U.S. ROW for all Services rendered and expenses incurred through the date of termination. In the event of such termination by City during any phase of the Project Services, U.S. ROW will be paid for Services rendered and expenses incurred through the date of termination.

**Section 5.2.3 Payments after Termination by U.S. ROW.** In the event of termination by U.S. ROW under paragraph 6.1, U.S. ROW will be paid for all Services rendered and expenses incurred through the date of termination.

**Section 5.2.4 Records.** If City desires to have copies of U.S. ROW records, copies will be made available to City upon City's request prior to final payment for U.S. ROW's services. U.S. ROW shall be reimbursed the cost of any such copies by City.

## **SECTION 6 GENERAL CONSIDERATIONS**

**Section 6.1 Termination.** The obligation to provide further services under this Agreement may be terminated by either party upon thirty (30) days written notice to the other party in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

**Section 6.2 Standard of Practice, Warranties.** Services performed by the U.S. ROW under this Agreement will be conducted in a manner consistent with the level of care, diligence and skill ordinarily possessed and exercised by other like service providers currently practicing in the same locality under similar conditions. Except as expressly set forth above, no other representations, expressed or implied, and no warranty or guarantee, express or implied, is included in this Agreement, or with reference to service provided hereunder.

### **Section 6.3 Insurance.**

**Section 6.3.1 U.S. ROW Insurance.** U.S. ROW shall maintain throughout the duration of this Agreement insurance in the following amounts and will furnish a copy of certification to the City thereof:

- (a) Worker's Compensation and Employer's Liability  
Worker's Compensation Statutory  
Employer's Liability  
\$500,000/\$500,000/\$500,000
- (b) Comprehensive Automobile Liability  
\$1,000,000 combined single limit Bodily Injury and Property Damage
- (c) Comprehensive General Liability  
\$1,000,000 - per occurrence  
\$2,000,000 - annual aggregate  
\$2,000,000 - product / completed operations per occurrence  
\$1,000,000 - personal injury / advertising liability
- (d) Umbrella/Excess Liability  
\$1,000,000 - per occurrence  
\$1,000,000 - annual aggregate

### **Section 6.4 Liability and Indemnification.**

#### **SECTION 6.4.1 U.S. ROW INDEMNIFICATION.**

**U.S. ROW AGREES TO INDEMNIFY AND HOLD THE CITY HARMLESS FROM ANY DAMAGE, LIABILITY OR COST (INCLUDING REASONABLE ATTORNEY'S FEES AND COSTS OF DEFENSE) TO THE EXTENT CAUSED BY U.S. ROW'S NEGLIGENT ACTS, ERRORS OR OMISSIONS IN THE PERFORMANCE OF SERVICES UNDER THIS AGREEMENT AND THOSE OF ITS SUBCONSULTANTS OR ANYONE FOR WHOM U.S. ROW IS LEGALLY LIABLE. U.S. ROW IS NOT OBLIGATED TO INDEMNIFY THE CITY IN ANY MANNER WHATSOEVER FOR THE CITY'S OWN NEGLIGENCE.**

**SECTION 6.4.3 EMPLOYEE CLAIMS. U.S. ROW SHALL INDEMNIFY CITY AGAINST ANY LOSS, DAMAGE, COST OR EXPENSE ARISING OUT OF CLAIMS BY U.S. ROW'S EMPLOYEES EXCEPT TO THE EXTENT CAUSED BY THE NEGLIGENCE OF CITY, ITS EMPLOYEES, AGENTS OR CONTRACTORS).**

**SECTION 6.4.4 SURVIVAL. THE TERMS AND CONDITIONS OF THIS SECTION 6.4 SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT AND/OR THE COMPLETION OF THE SERVICES.**

### **SECTION 7 SPECIAL PROVISIONS, EXHIBITS AND SCHEDULES**

**Section 7.1 Entire Agreement.** This Agreement together with the Exhibits identified above constitute the entire agreement between City and U.S. ROW and supersede all prior written or oral understandings. This Agreement and said Exhibits may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the City or U.S. ROW. U.S. ROW' services under this Agreement are being performed solely for the City's benefit, and no other party or entity shall have any claim against

**Section 7.2 Attorneys Fees.** In the event that either party hereto employs an attorney to enforce any provision of this Agreement or to collect damages for default or breach of this Agreement, or pursue claims in litigation or arbitration, the prevailing party in any such action shall be entitled to recover from the other such attorneys' fees and costs of collection as the prevailing party may expend or incur with respect thereto. In the event that a settlement is reached between the parties before a final decision in any such litigation or arbitration, then neither party shall be entitled to recover its attorneys fees or costs from the other and neither party shall be responsible for the other party's attorney's fees or costs, unless otherwise agreed by the parties.

**Section 7.3 Disputes.** In the event a dispute arises between U.S. ROW and City regarding the application or interpretation of any provision of this Agreement, or quality of Services by U.S. ROW, the aggrieved party shall promptly notify the other party to this Agreement of the dispute, but

in no event more than twenty (20) days after such dispute arise, the parties agree that each shall appoint a senior representative to engage in immediate good faith negotiations to resolve said dispute. If the parties fail to resolve the dispute within twenty (20) days after receipt of such notice, then each party shall have all remedies available to it in law and in equity. All disputes shall be governed by the laws of the State of Texas and the jurisdiction and venue for litigation between the parties shall be solely and exclusively in Collin County, Texas.

**Section 7.4 Independent Contractor.** U.S. ROW shall be an independent contractor with respect to the Services to be performed hereunder. Neither U.S. ROW, nor its independent professional associates, Consultants or subcontractors, nor the employees of any of the foregoing, shall be deemed to be the servants, employees or agents of City.

**Section 7.5 Representations and Remedies.** U.S. ROW makes no representations, covenants, warranties or guarantees, express or implied, other than those expressly set forth herein.

**Section 7.6 Assignment and Subcontractors.** This Agreement shall not be assignable by either party without the prior written consent of the other party hereto, except that it may be assigned without such consent to the successor of either party, or to a person, firm or corporation acquiring all or substantially all of the business assets of such party or to a wholly owned subsidiary of either party, but such assignment shall not relieve the assigning party of any of its obligations under this Agreement. No assignment of this Agreement shall be valid until this Agreement shall have been assumed by the assignee. This Agreement shall be binding upon and shall inure to the benefit of the U.S. ROW' and City's respective successors and assigns. Nothing in this Section 7.6 shall prevent or be deemed to prevent U.S. ROW from employing, contracting with or engaging independent professional associates, Consultants and other subcontractors to perform or assist in the performance of the Services.

**Section 7.7 Notices.** All notices or communications pertaining to this Agreement shall be in writing and shall be sufficient when mailed or delivered to the address specified below:

If to CITY:

Chris Holstead  
City Engineer  
City of Wylie, Texas  
300 Country Club Drive  
Wylie, Texas 75098

Attention:

If to U.S. ROW:

Stephanie Burkhardt  
U.S. Right of Way  
151 W. Walters Street  
Lewisville, TX 75057

**Section 7.8 Interpretation.**

(a) This Agreement shall be governed by and interpreted in accordance with the laws of Texas.

(b) Headings and titles of sections, paragraphs and other subparts of this Agreement are for convenience of reference only and shall not be considered in interpreting the text of this Agreement. Modifications or amendments to this Agreement must be in writing and executed by duly authorized representatives of each party.

(d) In the event that any portion or all of this Agreement is held to be void or unenforceable, the parties agree to negotiate in good faith to reach an equitable agreement which shall effect the intent of the parties as set forth in this Agreement.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the \_\_\_\_\_ day of \_\_\_\_\_ 2011.

**CITY OF WYLIE, TEXAS**

By: \_\_\_\_\_  
Printed Name: Mindy Manson  
Title: City Manager

**U.S. ROW ACQUISITION COMPANY**

By: Stephanie Burkhardt  
Printed Name: Stephanie Burkhardt  
Title: CEO

**EXHIBIT "A"**  
**Project Services**

## **CITY OF WYLIE**

### **RIGHT-OF-WAY ACQUISITION SERVICES CONTRACT**

#### **I SCOPE OF SERVICES**

**United States Right of Way Acquisition Company, Inc.** ("The Consultant") will act as Trustee/Broker for the City of Wylie, Texas, for purposes of obtaining right-of-way and easement parcels for various construction projects.

#### **II PROJECT SERVICES**

The consultant will serve as the City's professional right-of-way consultant for projects and will give consultation and advice to the City during the performance of his services. BASIC SERVICES for the project:

1. Possess and provide adequate equipment and experience in real estate acquisition by having the personality, temperament, interpersonal and professional skills necessary to and maintain good relations with property owners to the extent reasonably possible.
2. Review the project, engineering, right-of-way maps, surveys etc. to ensure complete understanding of the project.
3. Adhere to all pertinent requirements and directions as set out by the City for acquisition of rights-of-way.
4. Keep all services, including reports, opinions, and information to be furnished under this Contract confidential and not divulge the same, in whole or part, to any person, other than to duly authorized representatives, without written approval, except by testimony under oath in a judicial proceeding or as otherwise required by law.
5. Negotiate in good faith with all property owners. Negotiations shall include but are not limited to the following:
  - a. Providing each owner with a written offer to purchase the required parcel. The offer shall be amount approved by the City.
  - b. Making a diligent effort to contact all owners.
  - c. Making a diligent effort to secure the appropriate instruments on each parcel designated to be acquired.

- d. Prepare a negotiators report of each contact.
8. Submit to the City copies of all correspondence with the landowners.
9. Properly document the files of all actions to ensure compliance with the Title III of the Uniform Relocation Assistance and Real Properties Acquisition Act of 1970 and governing Federal Regulations when appropriate.
10. Prepare necessary conveyance instruments approved by the City.
11. Submit payment requests and coordinate the closing of the purchase as expeditiously as possible.
12. Miscellaneous meetings and consultation during the course of the project with the City, TxDOT, Consultants, and any others as required.
13. Preparation of any final offer letters and follow up contacts with parcel owners.

### **III. ADDITIONAL SERVICES**

Various extra services may be required of the Consultant not within the scope of the basic services described above. Extra Services shall be performed after prior approval from the City. Extra Services shall include the following:

1. Negotiations to secure affidavits, subordinations, partial or full releases for all liens, easements, mortgages and judgments.
2. Residential and Business Relocations in compliance with Uniform Relocation Assistance and Real Properties Acquisition Act of 1970.
3. Title clearance and status of taxes and other matters relating to clear title.
4. Title investigations in lieu of or in addition to Title Company services. The Consultant cannot provide Title Insurance and therefore cannot warrant such title investigations.
5. Expert witness which shall include pretrial conferences, depositions, special commissioner hearings and court appearances, and any other consultations with the City directly related to preparation of court testimony.
6. Other Consultant services, such as utility relocation efforts or assisting with communications with TxDOT for necessary compliance with State and Federal policies and procedures as required.

### **IV. GENERAL SERVICES TO BE PERFORMED BY THE CITY**



Prior to any negotiations, the City will furnish the following information, as it becomes available:

1. Right-of-way map and construction plans showing the proposed right-of-way lines and whole property lines for each property affected by the Project. The right-of-way map shall include the location of the improvements on the property which are in proximity to the right-of-way line, the areas of the whole property, and the area of the remainder as well as the area of the parcel.
2. Metes and bounds, or centerline legal description of each right-of-way and computed areas of easements.
3. Purposes of usage of easements to be acquired and the term of the easement if temporary.
4. Report of all known prior contacts with property owners, made by consulting engineers or our personnel, to facilitate negotiations of acquisitions.
5. The City is responsible for all costs of closing.
6. Title and ownership information.

**CITY OF WYLIE, TEXAS**

**UNITED STATES RIGHT OF WAY  
ACQUISITION COMPANY**

\_\_\_\_\_

*Stephanie Burkhardt*

Stephanie D Burkhardt  
CEO

\_\_\_\_\_

Date

5-2-11  
\_\_\_\_\_  
Date





Item Number:	7.
	(City Secretary's Use Only)
Account Code:	N/A
Budgeted Amount:	N/A
Exhibits:	1

Consider, and act upon, Resolution No. 2011-11(R) designating the former Library building, located at 800 Thomas Street, to be set aside and reserved for use as a new Senior Citizen Center.

Motion to approve Resolution No. 2011-11(R) designating the former Library building, located at 800 Thomas Street, to be set aside and reserved for use as a new Senior Citizen Center.

At the request of Mayor Hogue, this item has been placed on the agenda for Council consideration. A consensus was reached during FY 2010-11 Budget Work Sessions that the former Library building be reserved for future use as a new Senior Citizen Center; however, no formal action has been taken to ratify that decision. The Resolution is intended to formally designate and reserve the former Library for the use of a Senior Citizen Center and to memorialize that decision.

	<i>Initial</i>	<i>Date</i>
<b>Department Director</b>		
<b>City Manager</b>	MM	05-02-2011

**RESOLUTION NO. 2011-11(R)**

**RESOLUTION OF THE CITY OF WYLIE, TEXAS  
DESIGNATING THE FORMER LIBRARY BUILDING,  
LOCATED AT 800 THOMAS STREET, TO BE SET ASIDE  
AND RESERVED FOR USE AS A NEW SENIOR CITIZEN  
CENTER.**

**WHEREAS**, the Comprehensive Facilities Master Plan prepared by Brinkley Sargent Architects was presented to the Wylie City Council on January 27, 2005 and has since been the basis of City facility planning efforts; and

**WHEREAS**, the adopted Plan recommends that the building that formerly housed the Smith Public Library be utilized by either the Parks Department or as a Senior Citizen Center; and

**WHEREAS**, during FY 2010-11 Budget discussions it was determined by the Wylie City Council that an alternate location be identified for future Parks Department use so that the former Library building could be reserved for the future use of a new Senior Citizen Center;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WYLIE, TEXAS:**

- (1) That the City facility located at 800 Thomas Street which formerly housed the Smith Public Library be set aside and reserved for use as a new Senior Citizen Center.

**DULY PASSED AND APPROVED** by the City Council of the City of Wylie, Texas, and this the 10th day of May, 2011.

\_\_\_\_\_  
Eric Hogue, Mayor

ATTEST:

\_\_\_\_\_  
Carole Ehrlich, City Secretary



# Wylie City Council

## AGENDA REPORT

Meeting Date: 05-10-2011  
Department: CM  
Prepared By: Jeff Butters  
Date Prepared: 04-25-2011

Item Number: \_\_\_\_\_  
Work Session  
(City Secretary's Use Only)  
Account Code: \_\_\_\_\_  
Budgeted Amount: \$ NA  
Exhibits: Public Safety Building floor plan

### Subject

Review Public Safety Building Floor Plan

### Recommendation

Approve the design of the Public Safety Building.

### Discussion

Better Design Resources LLC was retained to provide design services for the Wylie Public Safety Building remodel. After working with Police, Fire, and Municipal Court a design plan has been produced which is satisfactory to all involved.

### Approved By

Department Director  
City Manager

Initial  
JB

Date  
05-03-11